

**EXHIBIT C  
TO  
TESTIMONY OF  
DAVID L. COHEN  
EXECUTIVE VICE PRESIDENT  
COMCAST CORPORATION**

**BEFORE THE  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON GOVERNMENT REFORM**

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matter of	)	
	)	
TCR Sports Broadcasting Holding, L.L.P	)	File No. _____
	)	
Complainant	)	
	)	
v.	)	
	)	
Comcast Corporation	)	
	)	
Defendant	)	

**ANSWER OF COMCAST CORPORATION**

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July 14, 2005

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### EXHIBITS

- Exhibit 1:** Declaration of Steven B. Burke, Executive Vice President and Chief Operating Officer, Comcast Corporation.
- Exhibit 2:** Declaration of Madison Bond, Executive Vice President for Programming, Comcast Cable Communications, LLC.
- Exhibit 3:** Letter from Richard R. Zaragoza, Counsel for Allen & Company, to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission (July 11, 2005).
- Exhibit 4:** Letter from Richard R. Zaragoza, Counsel for Allen & Company, to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission (July 13, 2005).

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Comcast Corporation	)	
	)	
Defendant	)	

**ANSWER OF COMCAST CORPORATION**

Comcast Corporation ("Comcast"), by its attorneys, hereby files this answer in response to the above-captioned program carriage complaint filed by TCR Sports Broadcasting Holding, L.L.P. ("TCR") on June 14, 2005.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

1. The instances of Commission involvement in a program carriage decision are -- and should remain -- exceptionally rare. Putting aside considerations of the First Amendment,<sup>2</sup>

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<sup>1</sup> See *In the Matter of TCR Sports Broadcasting Holding, L.L.P. v. Comcast Corporation*, Carriage Agreement Complaint, File No. \_\_\_\_\_ (June 14, 2005) ("Complaint"). No CSR file number has been assigned to the Complaint as of the date this answer is filed.

<sup>2</sup> See *Leathers v. Medlock*, 499 U.S. 439, 444 (1991) (noting that cable programmers and operators "seek[] to communicate messages on a wide variety of topics and in a wide variety of formats" and are "engaged in 'speech' under the First Amendment"); *Turner I*, 512 U.S. 622, 636 (1994) ("There can be no disagreement on an initial premise: Cable programmers and cable operators engage in and transmit speech, and they are entitled to the  
(footnote continued...)

both Congress and the Commission expressly and properly recognized that business relationships between video programmers and program distributors are matters of private commercial negotiations, and understood that only exceptional circumstances could justify entangling the Commission in such negotiations.<sup>3</sup> Not surprisingly, the program carriage rules have been invoked only once, and then inconclusively, in more than a decade.<sup>4</sup>

2. This Complaint involves a situation that is especially ill-suited for Commission intervention. The tale told by TCR is incomplete, distorted, and misleading, and the claimed violations of the program carriage rules are non-existent. TCR's most dramatic accusations have already been repudiated by Allen & Company, an entity with "no stake in the outcome of the Complaint," in a letter sent to Chairman Martin on July 11, 2005.<sup>5</sup> TCR's other allegations are meritless. Comcast has never sought an equity interest in Mid-Atlantic Sports Network ("MASN"), the new regional sports network ("RSN") created by a joint venture among Major League Baseball ("MLB"), the Baltimore Orioles (the "Orioles"), and TCR, and does not want

(...footnote continued)

protection of the speech and press protections of the First Amendment."); *Los Angeles v. Preferred Communications, Inc.*, 476 U.S. 488, 494 (1986) ("Cable television partakes of some of the aspects of speech and the communication of ideas as do the traditional enterprises of newspaper and book publishers, public speakers, and pamphleteers.").

<sup>3</sup> See *In the Matter of Implementation of Section 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution and Carriage*, Second Rept. & Order, 9 FCC Rcd. 2642, ¶ 15 (1993) ("Program Carriage Order") (recognizing the need to "preserv[e] the legitimate aspects of negotiations for multichannel video programming that result in greater availability of programming to the multichannel video marketplace"). See also *id.* ("Indeed, we believe that these regulations will follow the statute's directive to 'rely on the marketplace, to the maximum extent feasible, to achieve greater availability' of the relevant programming" (quoting 1992 Cable Act § 2(b)(2))).

<sup>4</sup> See *In the Matter of Classic Sports Network, Inc. v. Cablevision Systems Corp.*, Order, 12 FCC Rcd. 22100 (1997) (dismissing program carriage complaint upon request of Classic Sports Network and Cablevision).

<sup>5</sup> Letter from Richard R. Zaragoza, Counsel for Allen & Company, to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission, at 1 (July 11, 2005) (attached hereto as Exhibit 3) ("Allen Letter").

an equity interest in that network. Moreover, MASN has failed to obtain immediate carriage not just from Comcast but also from a number of other multichannel video programming distributors (“MVPDs”).

3. A simple chronology of the key events will help to crystallize the issues before the Commission:

- Comcast SportsNet Mid-Atlantic, L.P. (“CSN”) carries Orioles’ baseball games pursuant to a 1996 agreement with the Orioles and TCR. That contract expires after the 2006 season, but also grants CSN a right of exclusive negotiation up to the last year of the agreement (which has not yet occurred) and a right-to-match as to future Orioles’ telecast rights.
- On September 16, 2004, MLB announced it was relocating the Montreal Expos to Washington, D.C. Over the next six months, MLB negotiated with various parties, including the Orioles and, separately, Comcast, regarding TV rights to the games of the new Washington Nationals.
- Before and during this period, TCR did not own or operate an RSN or possess the pay TV rights to *any* sports team in the greater Washington-Baltimore area. TCR produced certain Orioles’ games for broadcast television, but did not televise or otherwise distribute *any* Orioles’ games for pay television.
- On March 28, 2005, MLB, the Orioles, and TCR reached an agreement to create a joint venture to produce and exhibit Nationals’ games and, starting with the 2007 season, Orioles’ games on a new RSN (now known as MASN).
- CSN believes this agreement violates its existing contract with the Orioles and TCR since the Orioles and TCR did not provide CSN with an opportunity to negotiate an extension or to match the agreement struck with the new RSN (MASN). On April 21, 2005, CSN filed a lawsuit in Maryland state court on these contractual issues, and the matter is still in litigation.<sup>6</sup>

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<sup>6</sup> See *Comcast SportsNet Mid-Atlantic, L.P., Plaintiff, v. Baltimore Orioles L.P., TCR Sports Broadcasting Holding, L.L.P., Major League Baseball, Mid-Atlantic Sports Network*, Complaint, Civ. Action No. 260751-V, ¶¶ 60-61 (Md. Cir. Ct. filed Apr. 21, 2005) (“CSN Complaint”). CSN filed an amended complaint on May 24, 2005. See *Comcast SportsNet Mid-Atlantic, L.P., Plaintiff, v. Baltimore Orioles L.P., TCR Sports Broadcasting Holding*, (footnote continued...)

- Beginning in mid-April, 2005, MASN began seeking carriage of the new network on cable and satellite systems for distribution in a wide area spanning from Harrisburg, Pennsylvania, to Charlotte, North Carolina. Thus far, MASN has obtained carriage on DirecTV and RCN, but with no other MVPDs, including, among others, Comcast, EchoStar, Cox, Time Warner, Charter, and Adelphia. Separately, MASN has licensed approximately 80 Nationals' games this year to local broadcast stations in the Washington, D.C. area (which can be seen on all MVPD systems in the greater Washington area, including Comcast's cable systems).
- MASN had an initial meeting to discuss possible carriage with Comcast on April 14, 2005 and presented a draft term sheet during that meeting for a carriage agreement through March, 2011, including carriage of Nationals' games beginning in 2005 and Orioles games beginning in 2007. MASN sent Comcast a second term sheet on May 13, 2005. The second term sheet also proposed carriage of both Nationals' and Orioles' games. *At no point has MASN given Comcast a proposal to carry just the Nationals' games.*
- Comcast sent MASN a letter on June 7, 2005 requesting additional information. MASN replied to that letter on June 9, 2005 providing cursory and incomplete responses to Comcast's questions and indicating an interest in continuing discussions with Comcast and a willingness to provide additional information.
- *Only five days later*, on June 14, 2005, TCR filed the instant program carriage complaint.

4. TCR's program carriage claims are without merit and should be dismissed. As to the *first* claim -- that Comcast demanded an equity interest in MASN as a condition of carriage -- the plain facts are that Comcast has never demanded a financial interest in MASN or even had discussions with MASN or any other party regarding a financial interest in MASN. To the contrary, Comcast has repeatedly made clear that it has no interest in acquiring equity in MASN.

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(...footnote continued)

*L.L.P., Major League Baseball, Mid-Atlantic Sports Network*, First Amended Complaint, Civ. Action No. 260751-V (Md. Cir. Ct. filed May 24, 2005) ("CSN First Amended Complaint"). The complaint asserts claims based on breach of contract, breach of implied covenant of good faith and fair dealing, and tortious interference with contract.

5. Moreover, Comcast never demanded an ownership interest in TCR *prior* to the creation of MASN in March 2005. It would have made absolutely no sense for Comcast to seek an equity stake in TCR prior to March 2005, since, at that time, TCR did not own or operate an RSN and possessed no pay TV distribution rights to license.

6. TCR's claim to the contrary focuses entirely on negotiations between MLB and the Orioles that did not involve Comcast, and, as to these negotiations, TCR erroneously attributes to Comcast the actions of an individual who worked solely for *MLB*. Specifically, TCR offers the outrageous allegation that Steven Greenberg, a well-respected business executive with the investment firm of Allen & Company, operated secretly on Comcast's behalf to demand a financial interest in TCR. Allen & Company sent a letter to the Commission on July 11, 2005, flatly denying that Mr. Greenberg operated on behalf of Comcast in this matter. In particular, the letter states that:

TCR makes a number of unsupported allegations about Mr. Greenberg and Allen. None of those allegations are supported by the affidavit of a person having actual knowledge of the facts. They are based on the supposition and surmise of TCR and the Orioles' management. *All are false. Moreover, we understand that MLB officials told TCR they were false before the Complaint was filed.*<sup>7</sup>

In short, while TCR apparently knew at the time it filed its Complaint that the allegation was false, it nevertheless made the allegation and bases its case in chief on this falsehood. This is a clear abuse of Commission process and a violation of the Commission's rules against the filing

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<sup>7</sup> Allen Letter at 2 (emphasis added). Mr. Greenberg subsequently filed a declaration with the Commission swearing to the contents of the Allen Letter. *See* Letter from Richard R. Zaragoza, Counsel for Allen & Company, to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission (July 13, 2005) (attached hereto as Exhibit 4) ("Greenberg Declaration").

of frivolous pleadings.<sup>8</sup> Comcast joins Allen & Company in denying emphatically that Mr. Greenberg operated on Comcast's behalf to demand a financial interest in TCR or to discuss any other matter with TCR.

7. As to TCR's *second* claim, there is no credence to TCR's assertion that Comcast has unlawfully discriminated against MASN on the basis of affiliation. TCR's claim is undercut by two basic facts: (1) Comcast carries competing, independently owned RSNs in many markets, and (2) several MVPDs other than Comcast, including EchoStar, Cox, Time Warner, Adelphia, and Charter, have elected not to carry MASN, decisions which even TCR does not assert are attributable to considerations of "affiliation or nonaffiliation" -- just as Comcast's decision is not attributable to such considerations.

8. Indeed, Comcast's behavior reflects entirely legitimate business judgments under the circumstances, including, among other things, the proposed carriage terms, the lack of a defined program schedule for MASN, and the fact that TCR, the Orioles, and MLB have breached Comcast's contractual rights regarding the Orioles' games.

9. Comcast hereby *answers* TCR's *complaint*.<sup>9</sup> TCR has also purported to file other pleadings -- an "emergency petition" for injunctive relief and a motion for discovery (and associated requests for documents and interrogatories) -- that are impermissible under the Commission's rules and orders. Comcast provides generalized responses to these ancillary

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<sup>8</sup> As detailed *infra* Section IV.A, the Commission's rules provide for clear penalties in such instances, and TCR should be sanctioned accordingly.

<sup>9</sup> Specific, paragraph-by-paragraph responses to each of TCR's allegations appear in Section V below.

pleadings, but expressly reserves its rights to respond fully to those pleadings when, if, and to the extent that the Commission decides to consider them.

**II. COMCAST HAS NEVER REQUIRED, OR EVEN REQUESTED, A FINANCIAL INTEREST IN MASN OR TCR AS A CONDITION OF CARRIAGE.**

- A. TCR does not state a claim upon which relief can be granted under Section 1301(a) of the Commission's rules because the Complaint does not even allege that Comcast demanded a financial interest in MASN as a condition for carriage.**

10. Section 76.1301(a) of the Commission's program carriage rules prohibit a cable operator or other multichannel video programming distributor from "requir[ing] a financial interest in any program service as a condition of carriage on one or more of such operator's/provider's systems."<sup>10</sup>

11. Count Two of the Complaint alleges that Comcast unlawfully demanded, as a condition of carriage, an equity interest in "the regional sports network that produces and exhibits Nationals games."<sup>11</sup> MASN is the RSN that exhibits Nationals' games, and MASN did not come into existence as an RSN until *after* the March 28, 2005 agreement among MLB, the Orioles, and TCR.<sup>12</sup> Orioles' officials have confirmed that view.<sup>13</sup> Prior to the agreement with

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<sup>10</sup> 47 C.F.R. § 76.1301(a). *See also* 47 U.S.C. § 536(a)(1).

<sup>11</sup> *See* Complaint ¶ 76.

<sup>12</sup> This answer uses the term "MASN" to refer to the new RSN established by MLB, the Orioles, and TCR pursuant to their March 28, 2005 agreement. *See id.*, Ex. 37 (6/13/05 Motion to Dismiss Amended Complaint as to Mid-Atlantic Sports Network for Lack of Personal Jurisdiction and Memorandum in Support) (noting that trade name application for Mid-Atlantic Sports Network was filed with the Maryland Department of Assessments and Taxation on April 7, 2005). Every major area and sports trade publication has described MASN as a "new" network. *See, e.g.*, Andy Bernstein, *Comcast Scrap Hinders O's RSN deal with MLB*, Sports Business Journal, at 4 (June 20-26, 2005) (characterizing MASN as a "shiny new regional sports network"); Eric Fisher, *Nationals' TV Picture Clearing Up*, Wash. Times (Mar. 31, 2005) (same); Thomas Heath, *MLB, O's Agree on Sports Network*, Wash. Post, at D1 (Mar. 31, 2005) (same); Thomas Boswell, *A TV Fight That's Tough to Watch*, Wash. Post, at D1 (May 6, 2005) (referring to Peter Angelos's "new Mid-Atlantic Sports Network"); Jeff Barker, *Nationals Making Pitch for Fans on Oriole Turf in Howard, Anne Arundel*, Balt. Sun (May 11, 2005) (discussing the "fledgling Mid-Atlantic Sports Network").

(footnote continued...)

MLB, the only rights TCR had for any local team were the rights to produce Orioles' games for over-the-air broadcast.<sup>14</sup> TCR did not have the pay TV rights to *any* local sports teams and was not operating as an RSN.<sup>15</sup> (It certainly was not recognized as an RSN by the Commission.<sup>16</sup>) So it would have made no sense for TCR to be seeking a carriage agreement from Comcast (given that TCR had no programming to distribute) or for Comcast to have been seeking a financial interest in return (even if it were inclined to make such a request).

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(...footnote continued)

Atlantic Sports Network"); Mike Hume, *Picking Splinters*, Falls Church News-Press (May 28, 2005) (mentioning the "recently born Mid-Atlantic Sports Network"); *Orioles Move for Dismissal of Comcast Lawsuit*, AP (June 13, 2005) (noting that MASN was "created to distribute Orioles and Washington Nationals telecasts").

<sup>13</sup> See Thomas Heath, *Orioles Accuse Comcast of Intimidating Cable Prospects*, Wash. Post, at D1 (May 24, 2005) (quoting William Murphy, Jr., Orioles' attorney as saying that: "The Orioles have *formed* their own regional sports network." (emphasis added)).

<sup>14</sup> The Orioles and TCR had already licensed the pay television rights to the Orioles' games to Comcast Sports Net Mid-Atlantic ("CSN") by way of a ten-year contract executed in 1996. See Complaint, Ex. 11 ("1996 License Agreement").

<sup>15</sup> TCR asserts, without evidentiary support, that it was operating as a regional sports network prior to the launch of MASN in April 2005. See Complaint ¶ 2 ("In 2001, TCR began operating a regional sports network under the trade name, 'Orioles Baseball Network' for over-the-air broadcasts of Orioles games."). See also *id.*, Ex. 4 ¶ 9 (Foss Decl.) (stating that "in 2002, the Orioles, through TCR, launched a regional sports network which produced and exhibited approximately 65 over-the-air television games per season within the Orioles' Television Territory"). In fact, TCR has been a licensing and production arm for the Orioles, but it certainly has never qualified as an RSN. Prior to March 28, 2005, TCR operated no network, had no MVPD distribution contracts, and delivered no games to consumers. As noted, all of the Orioles' pay TV games have been telecast on CSN (and HTS before that), and all of the Orioles' over-the-air games are telecast by local broadcast stations in the Washington/Baltimore region. See *id.*, Ex. 18 at 2 (9/23/04 presentation to MLB Executive Committee (noting that "Media rights for professional sports teams in the region are held by Comcast Sports Mid-Atlantic"). See also *Comcast SportsNet Mid-Atlantic, L.P., Plaintiff, v. Baltimore Orioles L.P., TCR Sports Broadcasting Holding, L.L.P., Major League Baseball, Mid-Atlantic Sports Network*, Memorandum in Opposition to Defendants' Motions to Dismiss, Civ. Action No. 260751-V, at 15-19 (Md. Cir. Ct. filed July 12, 2005) ("CSN Opposition") (noting, among other things, that TCR was not registered as an RSN and did not possess any pay TV rights).

<sup>16</sup> See, e.g., *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eleventh Annual Report, 20 FCC Rcd. 2755, at Table C-4 (2005) (listing "Regional Video Programming Services"). Cf. *YES Network v. Cablevision*, 224 F. Supp.2d 657, 663 (S.D.N.Y. 2002) (defining RSNs as "networks focused primarily on airing live sporting events of local sports teams" (emphasis added)).

12. Consequently, the only relevant question with respect to Count Two is whether Comcast ever demanded an equity interest in MASN between the time MASN first approached Comcast about possible carriage on April 14, 2005 and the filing of the Complaint on June 14, 2005.

13. The answer to that question is “no.” As shown in the attached Declaration of Madison Bond, executive vice president for programming at Comcast Cable Communications, LLC, at no time has Comcast ever demanded of MASN, requested of MASN, or even discussed with MASN acquiring a financial interest in MASN.<sup>17</sup> Significantly, the Complaint does not even *allege* otherwise; its allegations involve statements by a person who was not representing Comcast, which statements were made in the context of negotiations that pre-dated March 28, 2005 (*i.e.*, the date that MLB, the Orioles, and TCR agreed to establish the new RSN) and that were entirely separate from MASN’s efforts to obtain carriage agreements.<sup>18</sup> In fact, Comcast has repeatedly made clear that it has no interest in owning any part of MASN.<sup>19</sup> This is fatal to TCR’s Count Two claim.

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<sup>17</sup> See Declaration of Madison Bond ¶ 11 (attached hereto as Exhibit 2) (“Bond Decl.”).

<sup>18</sup> See Complaint ¶ 36. See also *id.*, Ex. 4 ¶ 1 (Foss Decl.).

<sup>19</sup> See *id.*, Ex. 3 (6/3/05 Letter from John Schmidtlein to Michael Kellogg). See also Timothy Dwyer, *Nats Caught in a TV Rundown*, Wash. Post, at A1 (June 28, 2004) (quoting Comcast Executive Vice President David Cohen as saying: “We have never asked for and are not interested in an equity position in MASN”).

**B. Comcast has never demanded, or even requested, an ownership stake in TCR.**

14. TCR attempts to confuse the issue by alleging that Comcast, through intermediaries, sought an equity interest in TCR, *prior* to the creation of MASN in March 2005. Comcast states categorically that this claim is false.<sup>20</sup>

15. TCR was not part of the discussions between MLB and the Orioles at the time.<sup>21</sup> More fundamentally, TCR's allegation rests entirely on a claim that Steve Greenberg, an investment banker at Allen & Company, was secretly acting as an agent for Comcast.<sup>22</sup> The claim is completely false.

16. TCR's claims that Mr. Greenberg was surreptitiously working on behalf of Comcast are preposterous. According to TCR's own Complaint, *MLB* hired Mr. Greenberg to serve as a consultant to *MLB* on the Nationals' TV rights.<sup>23</sup> Although TCR asserts that this was all a sham -- that Mr. Greenberg was acting secretly on behalf of Comcast in these discussions<sup>24</sup> -- TCR provides not a scintilla of evidence to support this extraordinary and outrageous claim and

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<sup>20</sup> See Declaration of Stephen B. Burke Decl. ¶ 4 (attached hereto as Exhibit 1) ("Burke Decl.").

<sup>21</sup> See *infra* Section II.C. for detailed discussion on this issue.

<sup>22</sup> See Complaint ¶¶ 25-37. TCR admits that Comcast never approached TCR or the Orioles directly about seeking such an equity interest. See *id.* ¶ 36. See also Andy Bernstein, *Comcast Scrap Hinders O's Deal With MLB*, Sports Business Journal, at 4 (June 20-26, 2005) (noting that David Frederick, outside counsel for MASN, "acknowledged that the Orioles had no direct communication with Comcast regarding ownership in a new network").

<sup>23</sup> Complaint ¶ 26. Indeed, Mr. Greenberg has a long relationship with Major League Baseball. Mr. Greenberg has served as Deputy Commissioner and Chief Operating Officer of MLB. See Greenberg Declaration ¶¶ 2-3. He was also hired by Commissioner Selig's family to handle the sale of the Milwaukee Brewers. See *Source: Brewers Ownership Accepts Sale Offer*, USA Today (Sept. 27, 2004). It should therefore come as no surprise to TCR that MLB would hire Mr. Greenberg to help with the disposition of the Nationals' TV rights.

<sup>24</sup> Complaint ¶¶ 25-37.

*admits* that it is relying on inferences and suppositions.<sup>25</sup> The fact that TCR's counsel failed to provide written verification, as the Commission's rules explicitly require,<sup>26</sup> is sufficient reason for the Commission to question the veracity of these allegations.

17. Moreover, since the filing of these allegations, they have been explicitly refuted by parties with direct knowledge of the facts and with no interest in the dispute between Comcast and TCR. Mr. Greenberg has stated in a sworn declaration filed with the Commission that "[t]he claims set forth [in the Complaint] that I was secretly employed by Comcast Corporation ("Comcast"), or acted as the agent of Comcast Corporation, are false. Throughout the period in question my client, and that of Allen & Company, was MLB and no one else."<sup>27</sup> Allen & Company has also sent a letter to Chairman Martin on July 11, 2005 stating unequivocally that these allegations were false.<sup>28</sup> That letter further suggests that MLB had advised TCR *prior* to the filing of the Complaint that Mr. Greenberg was hired by MLB and had no involvement

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<sup>25</sup> See *id.*, Ex. 4 ¶¶ 11, 15 (Foss Decl.). See also Thomas Heath, *Orioles Accuse Comcast of Intimidating Cable Prospects*, Wash. Post, at D1 (May 24, 2005) (quoting William Murphy, Jr., an Orioles attorney, as saying that Comcast's "*unspoken* position is that they won't televise Nationals games until they own a piece of MASN." (emphasis added)). It is also strange that only now does TCR make this claim when, according to the Complaint, "it was apparent to the Orioles that Greenberg was acting as the agent of Comcast" at the time he was giving his presentations, over nine months ago. Complaint ¶ 35.

<sup>26</sup> See 47 C.F.R. § 76.6(a)(4) ("Each submission must contain a written verification that the signatory has read the submission and to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose."). The Complaint did not include such a verification.

<sup>27</sup> Greenberg Declaration ¶ 4. See also Thomas Heath, *FCC Asked by O's to Rule on Nats TV Stalemate*, Wash. Post, at E1 (June 15, 2005) (quoting Mr. Greenberg as saying that: "These allegations regarding Allen & Company are as ridiculous as they are factually inaccurate.").

<sup>28</sup> See Allen Letter at 2.

whatsoever with Comcast, and yet TCR made the allegation anyway in its Complaint.<sup>29</sup> This is a clear abuse of Commission process and a clear and sanctionable violation of the Commission's rule against the filing of frivolous pleadings.<sup>30</sup>

18. The Greenberg and Allen & Company documents are dispositive on the issue of Mr. Greenberg's role. Nonetheless, to eliminate any possible doubt, Comcast unequivocally confirms that at no point did it ever retain Mr. Greenberg to act as its agent to discuss any matter with TCR, the Orioles, or MLB.<sup>31</sup>

19. In addition to mischaracterizing Mr. Greenberg's role in the discussions between MLB and the Orioles, TCR makes a series of assertions that falsely portray Comcast's relationship with Mr. Greenberg and Allen & Company. For example, TCR implies that Allen & Company represented Comcast in the transaction to acquire Adelphia.<sup>32</sup> In fact, Mr. Greenberg worked for *Adelphia*, not Comcast, in that transaction.<sup>33</sup> Also, contrary to TCR's implications,

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<sup>29</sup> See *id.* See also *id.* at 4 ("Allen and Mr. Greenberg have represented only MLB in connection with this matter. At all times they have acted in good faith in what they believed were the best interests of MLB. They did not represent Comcast in this matter or serve as its agent. It is indeed unfortunate that false accusations to the contrary were submitted to the Commission in a proceeding in which Allen is not named as a party.").

<sup>30</sup> See 47 C.F.R. § 76.6(c) ("It shall be unlawful for any party to file a frivolous pleading with the Commission."). See also 47 U.S.C. § 536(a)(6) (directing the Commission to adopt rules that "provide penalties to be assessed against any person filing a frivolous complaint pursuant to this section"). The verification requirement previously cited places a burden on counsel to "read the submission" and ensure the Commission that, "to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact . . ." That obviously was not done here.

<sup>31</sup> See Burke Decl. ¶ 10.

<sup>32</sup> See Complaint ¶ 30 (stating that "Allen & Company was also involved in a major acquisition by Comcast from Adelphia").

<sup>33</sup> See Burke Decl. ¶ 11. See also Allen Letter at 3 ("Allen was indeed an advisor in the proposed sale of Adelphia to Comcast and Time Warner; however, it acted as advisor to Adelphia, not to Comcast. Moreover, the very SEC filing TCR references to support its claims shows that Allen & Company is to be paid by Adelphia, not Comcast."). See Complaint, Ex. 17 (4/26/05 Comcast Form 8-K § 3.26) (noting that "Seller" (i.e., Adelphia) will pay fees to Allen & Company).

in the transaction to create an RSN to televise New York Mets baseball games,<sup>34</sup> Mr. Greenberg represented the *New York Mets*, not Comcast or Time Warner.<sup>35</sup> And, while Comcast did speak with Allen & Company regarding a possible bid for Vivendi in 2003, TCR fails to mention that Comcast worked very briefly with Allen & Company on the project and that Mr. Greenberg had no involvement whatsoever in the discussions.<sup>36</sup> In short, there is absolutely no factual basis for TCR's allegation that Mr. Greenberg was acting as Comcast's agent in the Orioles' discussions with MLB or that Mr. Greenberg or his firm were otherwise "representing Comcast's interests" during the summer and fall of 2004.<sup>37</sup>

20. Moreover, it would have made no sense to have Mr. Greenberg or any other outside consultant perform such activities on behalf of Comcast. As the Complaint acknowledges, Comcast was making its own proposal to MLB between September 2004 and March 2005 about TV rights to the Nationals' games.<sup>38</sup> There was no reason why Comcast would have hired a third party to pitch a different set of proposals to MLB and certainly no reason why Comcast would have sought to do so in the bizarre manner alleged by TCR. In fact, Comcast only proposed to MLB a "rights" deal to carry Nationals' games on CSN, and

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<sup>34</sup> See Complaint ¶ 33.

<sup>35</sup> See Burke Decl. ¶ 11.

<sup>36</sup> See *id.* See also Allen Letter at 3 ("The specific allegation regarding the contemplated bid for Vivendi is false, however. Allen spoke with Comcast about Vivendi over a very brief period of time in 2003, but was never engaged and no transaction ever resulted."). In fact, as Allen & Company notes in its letter, Mr. Greenberg has never advised Comcast on any matter. See *id.*

<sup>37</sup> See Complaint ¶ 79.

<sup>38</sup> See *id.* ¶ 23. See also CSN First Amended Complaint ¶ 50.

specifically rejected an MLB proposal to create a new joint venture with the Orioles to televise Orioles' and Nationals' games on a new RSN.<sup>39</sup>

**C. Even if Mr. Greenberg had been representing Comcast, which he was not, any discussion of “equity” in 2004 was properly linked to issues other than cable carriage.**

21. The Commission's implementing order makes plain that MVPDs may negotiate for financial interests in program services “in the context of good faith, arms-length discussions,” but may not “insist upon” such benefits *in exchange for carriage* on their systems.<sup>40</sup> The Commission went on to clarify the types of conduct that would come within the scope of the rules: “We believe that ultimatums, intimidation, conduct that amounts to the exertion of pressure beyond good faith negotiations, or behavior that is tantamount to an unreasonable refusal to deal with a vendor who refuses to grant financial interests or exclusivity rights *in exchange for carriage*, should be considered examples of behavior that violates the prohibitions set forth in Section 616.”<sup>41</sup>

22. TCR has not provided any evidence of ultimatums, intimidations, or similar conduct at any time by anyone associated with Comcast.<sup>42</sup>

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<sup>39</sup> See Burke Decl. ¶¶ 5, 11 (describing Comcast's discussions with MLB regarding the Nationals' rights prior to the March 28, 2005 agreement).

<sup>40</sup> *Program Carriage Order* ¶ 17.

<sup>41</sup> *Id.* (emphasis added). The Commission also underscored that its rules were designed to prohibit unfair and anticompetitive actions “without restraining the amount of multichannel programming available by precluding legitimate business practices common to a competitive marketplace.” *Id.* ¶ 15. See also *id.* (citing 1992 Cable Act directive to “rely on the marketplace, to the maximum extent feasible, to achieve the greater availability” of the relevant programming).

<sup>42</sup> In this regard, TCR's suggestion that Comcast has refused “even to negotiate with TCR over televising the Nationals' games” is inaccurate. According to TCR's own declarant, Mr. David Gluck, MASN representatives met with Matt Bond, Comcast's Executive Vice President of Programming, and Alan Dannenbaum, Comcast's Senior Vice President of Programming, on April 14, 2005 to discuss MASN's initial term sheet. See Complaint, Ex. 20 (footnote continued...)

23. In addition, as noted, TCR's Complaint makes clear that MLB and the Orioles were discussing a proposal (put forth by Mr. Greenberg, *on behalf of MLB*) that Comcast, the Orioles, and the Nationals would share joint ownership in a two-network joint venture.<sup>43</sup> Presumably, under this proposal, Comcast would have been expected to contribute to this new joint venture entity its TV rights to the Orioles (at least through the 2006 MLB season), the Wizards (at least through the 2011-2012 season), and the Capitals (through the 2016-2017 NHL season), and MLB would have contributed the TV rights to the Nationals.

24. Under these circumstances, it would have been entirely logical that Comcast would end up with equity in the resulting two-network joint venture, particularly when Comcast would have been contributing TV rights to three of the four teams to be carried on the new network. This would have been exchanging one form of equity for another, not exchanging equity for carriage.

25. In any event, any such discussions were between MLB and the Orioles and did not involve Comcast. Comcast's own efforts were focused not on acquiring "equity" in anything, but on licensing the rights to the Nationals for Comcast's existing network, CSN.<sup>44</sup>

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(...footnote continued)

(Declaration of Mr. David Gluck, consultant to TCR). MASN sent Comcast a second proposed term sheet on May 13, 2005, and Mr. Bond provided comments and questions on that term sheet on June 7, 2005. *Id.* ¶ 12. *See also* Complaint, Ex. 34 (6/7/05 Letter from Matt Bond to David Gluck). MASN sent a reply to Mr. Bond on June 9, 2005 offering to "provide you with whatever information you may need to make an informed decision about carrying the Nationals games and the MASN service." *See* Complaint, Ex. 35 (6/9/05 Letter from David Gluck, MASN, to Matt Bond, Comcast). TCR filed the Complaint five days later.

<sup>43</sup> The Allen Letter makes abundantly clear that the joint venture proposal was developed by Mr. Greenberg and that "[a]s of September, 2004, neither he nor anyone else at Allen had ever discussed the concept of a new Washington RSN with Comcast." Allen Letter at 3.

<sup>44</sup> *See* Burke Decl. ¶ 9.

### III. TCR'S CLAIM THAT COMCAST ENGAGED IN UNLAWFUL DISCRIMINATORY CONDUCT TOWARDS MASN IS UNFOUNDED AND SHOULD BE DISMISSED.

#### A. Requirements of program carriage rules.

26. Section 76.1301(c) of the Commission's rules prohibits MVPDs from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.<sup>45</sup>

27. Thus, the Commission's rules and the underlying statutory provision cannot be violated absent "discriminat[ion] on the basis of affiliation," as opposed to other factors. And, they prohibit only conduct "the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly."<sup>46</sup> The rules specifically require that a complainant must provide evidence in its complaint satisfying the second of these requirements.<sup>47</sup> TCR has not satisfied either element required to prove a violation of this rule.

#### B. There is no merit to TCR's claim that Comcast has discriminated against MASN "on the basis of affiliation."

28. As any established network knows (and as the industry professionals at TCR should be aware), carriage negotiations are highly complex, and carriage decisions are typically informed by a wide range of considerations. In general, as Comcast has stated on the record in

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<sup>45</sup> See 47 C.F.R. § 76.1301(c). See also 47 U.S.C. § 536(a)(3).

<sup>46</sup> 47 C.F.R. § 76.1301(c). See also 47 U.S.C. § 536(a)(3).

<sup>47</sup> See 47 C.F.R. § 76.1302(c)(3).

prior Commission proceedings, cable operators and other MVPDs make carriage decisions based on, among other things, an understanding of the nature of the programming involved, its target demographics, its likely appeal to consumers, its similarities and differences from other programming available to the MVPD, its cost, and other factors.<sup>48</sup> There are, in fact, a variety of reasons why Comcast *and other MVPDs* have independently elected not to carry MASN -- none of which has anything to do with affiliation.

**1. Comcast carries competing RSNs in many markets, and this fact alone significantly weakens TCR's claim that "non-affiliation" motivates Comcast's actions in regard to MASN.**

29. TCR is simply wrong in suggesting that Comcast is attempting, by its conduct, to prevent MASN from competing against CSN. Comcast is accustomed to competition in every facet of its business, and Comcast responds to competition appropriately and lawfully. More to the point, Comcast faces an RSN competitor in nearly every region of the country where it operates or co-owns an RSN, including the following geographic markets (Comcast affiliate in bold), and in each case Comcast carries (or will carry) both the affiliated and the non-affiliated networks:

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<sup>48</sup> See Comcast Ex Parte, filed in CS Dkt. No. 98-120 (Sept. 6, 2002) (citing comments from Mr. Alan Dannenbaum, Vice President of Programming for Comcast); Bond Decl. ¶ 13. See also Complaint, Ex. 34 (Letter from Matt Bond to David Gluck) (requesting further information on the types of programming MASN intends to carry).

<b>MARKET</b>	<b>RSNs (Comcast affiliates in bold)</b>
<b>Atlanta</b>	<ul style="list-style-type: none"> <li>•<u>Fox Sports Network ("FSN") South:</u> Atlanta Braves, Atlanta Hawks</li> <li>•<u>Turner South:</u> Atlanta Braves, Atlanta Hawks, Atlanta Thrashers</li> <li>•<b><u>Comcast Sports Southeast ("CSS"):</u></b> Intercollegiate sports programming</li> </ul>
<b>Boston</b>	<ul style="list-style-type: none"> <li>•<u>New England Sports Network:</u> Boston Red Sox, Boston Bruins</li> <li>•<b><u>FSN New England:</u></b> Boston Celtics</li> </ul>
<b>Chicago</b>	<ul style="list-style-type: none"> <li>•<b><u>Comcast SportsNet Chicago:</u></b> Chicago Bulls, Chicago Blackhawks, Chicago Cubs, and Chicago White Sox</li> <li>•<u>FSN Chicago:</u> Chicago Rush (Arena Football)</li> </ul>
<b>Detroit</b>	<ul style="list-style-type: none"> <li>•<u>FSN Detroit:</u> Detroit Pistons, Detroit Tigers, Detroit Shock</li> <li>•<b><u>Comcast Local Detroit:</u></b> Intercollegiate sports, minor league baseball</li> </ul>
<b>Miami/Orlando/Tampa Bay</b>	<ul style="list-style-type: none"> <li>•<u>FSN Florida:</u> Florida Panthers, Tampa Bay Devil Rays, Florida Marlins</li> <li>•<u>Sun Sports Network:</u> Miami Heat, Orlando Magic, Tampa Bay Lightning</li> <li>•<b><u>CSS:</u></b> Intercollegiate sports programming</li> </ul>
<b>New York</b>	<ul style="list-style-type: none"> <li>•<u>FSN New York:</u> New York Mets, New York Islanders, New Jersey Devils</li> <li>•<u>MSG Network:</u> New York Knicks, New York Rangers, New York Mets</li> <li>•<u>YES:</u> New York Yankees, New Jersey Nets</li> <li>•<b><u>Mets Network (Spring 2006):</u></b> New York Mets</li> </ul>
<b>San Francisco/Sacramento</b>	<ul style="list-style-type: none"> <li>•<b><u>CSN West:</u></b> Sacramento Kings, Sacramento Monarchs</li> <li>•<u>FSN Bay Area:</u> San Francisco Giants, Oakland Athletics, Golden State Warriors, San Jose Sharks</li> </ul>

Comcast carries the competing unaffiliated RSN service or services in *all* of these markets, providing strong evidence that the issue of “affiliation or nonaffiliation” does not drive its carriage determinations.<sup>49</sup>

30. In fact, the vast majority of *all* of the programming that Comcast carries is unaffiliated. In a typical market, Comcast makes available over 250 channels of video programming. But Comcast owns or has attributable interests in only nine national networks and 10 regional networks.<sup>50</sup> In Washington D.C., Comcast delivers over 250 channels of video programming services, of which it has ownership interests in only ten.<sup>51</sup> Again, questions of “affiliation or nonaffiliation” do not drive these determinations.

**2. TCR’s claims regarding discrimination are further undercut by the fact that MASN has failed to reach carriage arrangements with numerous MVPDs other than Comcast.**

31. TCR makes much of the fact that MASN has struck carriage deals with DirecTV and RCN, but not Comcast.<sup>52</sup> TCR fails to note, however, that Comcast is not the only MVPD in MASN’s service area that does not carry MASN. There are many others, including EchoStar,

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<sup>49</sup> See Bond Decl. ¶ 12.

<sup>50</sup> See *In the Matter of Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation to Time Warner Cable Inc. and Comcast Corporation*, Public Interest Statement, MB Dkt. No. 05-192, at 15-18 (filed May 18, 2005) (listing Comcast ownership interests in national and regional networks).

<sup>51</sup> See Comcast: Washington, D.C. Channel Lineup, available at <http://www.comcast.com/Support/ChannelGuidePrintable.ashx?CGID=925> (visited June 28, 2005). Comcast-affiliated channels include: E!, The Golf Channel, Outdoor Life Network, The Style Network, G4 Network, TV One, AZN Television, iN DEMAND (including high-definition and pay-per-view channels), and CSN.

<sup>52</sup> See Complaint ¶ 49.

Cox Cable, Time Warner, Adelphia, and Charter.<sup>53</sup> None of these MVPDs has an ownership interest in an RSN in the greater Washington, D.C. area, so MASN's failure to reach carriage agreements with these distributors must be attributable to factors other than "discrimination on the basis of affiliation" -- as is the case with Comcast's decision.

32. As noted, the relationship between a programmer and an MVPD is complex, and there are many reasons why an MVPD may not reach a carriage agreement with a particular programmer. Some of these reasons -- *e.g.*, cost, uncertainty as to terms and conditions of carriage, an ill-defined programming schedule -- are likely to influence the decisionmaking of MVPDs with regard to carriage of MASN. Cox, for example, has said publicly that it "looks forward to the day when [MASN] presents reasonable contractual terms that would allow Cox to carry MASN and the Nats" and that MASN "has not done so to date."<sup>54</sup>

33. And, as even MASN officials acknowledge, negotiating carriage agreements generally takes time -- often many months and sometimes in excess of a year.<sup>55</sup> MASN, however, clearly was focusing on Commission litigation rather than cable carriage negotiations by some time in advance of Mr. Kellogg's May 27, 2005 letter to Comcast indicating TCR's intent to file a program carriage complaint.<sup>56</sup> That May 27, 2005 letter was sent only six weeks after MASN *first* approached Comcast with a request for carriage.

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<sup>53</sup> See *id.*, Ex. 29 (listing of MVPDs that carry CSN in the greater Washington/Baltimore region).

<sup>54</sup> Eric Fisher, *MASN Spars with Comcast*, Wash. Times (May 27, 2005).

<sup>55</sup> See Eric Fisher, *Network Deal Gives Angelos Huge Fee*, Wash. Times (Apr. 29, 2005) (quoting Bob Whitelaw, Executive Vice President and General Manager of MASN, as saying: "What we're trying to do in days and weeks to set up this network is usually done in months.").

<sup>56</sup> See Complaint, Ex. 2 (5/27/05 Letter from Michael Kellogg, counsel for TCR, to Brian Roberts, Comcast).

**3. Comcast's actions with regard to MASN are also influenced by the breach of Comcast's contractual rights by MASN's owners.**

34. MASN's owners have blatantly breached the contractual rights of CSN, a wholly-owned subsidiary of Comcast, in a way that significantly, and legitimately, affects Comcast's decision on whether to carry MASN. The breach is the subject of litigation brought by CSN in Maryland state court.<sup>57</sup>

35. Briefly stated, CSN's existing contract to televise Orioles' games, which runs through the 2006 season, gives CSN the exclusive right through November 1, 2005 to negotiate an extension to the agreement as well as the right to match competing offers received after November 1, 2005 for the rights to televise Orioles' games beginning with the 2007 season.<sup>58</sup> And yet, on March 28, 2005, MLB, the Orioles and TCR agreed to create a "joint venture" that would own and license the local television rights to the Nationals' games beginning in the 2005 season and Orioles' games beginning in the 2007 season.<sup>59</sup> Not until after that March 28, 2005 agreement did MASN come into being as a regional sports network.<sup>60</sup> Thus, at the heart of the complaint in the Maryland litigation is CSN's claim that the March 28, 2005 agreement among

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<sup>57</sup> See *id.*, Ex. 22 (Comcast's initial Complaint in the Maryland litigation); Ex. 19 (First Amended Complaint).

<sup>58</sup> See *id.*, Ex. 11A (1996 Letter Agreement §16 (Right to Match)).

<sup>59</sup> See *id.*, Ex. 1 (March 28, 2005 Agreement). See also MLB.com Press Release, *MLB, Orioles Reach Agreement* (Mar. 31, 2005), available at [http://mlb.mlb.com/NASApp/mlb/content/printer\\_friendly/mlb/y2005/m03/d31/c982015.jsp](http://mlb.mlb.com/NASApp/mlb/content/printer_friendly/mlb/y2005/m03/d31/c982015.jsp). The Orioles currently own a 90% interest in MASN, with MLB owning the rest. See Complaint ¶ 45 & Ex. 1. MLB's ownership stake in MASN will increase by one percent each year and will be capped (presumably 23 years from now) at 33%. See *id.* Moreover, MLB has reportedly agreed to pay \$75 million for its ownership interest in MASN. See Eric Fisher, *Network Deal Gives Angelos Huge Fee*, Wash. Times (Apr. 29, 2005).

<sup>60</sup> See *infra* note 12.

MLB, the Orioles, and TCR breached both provisions by unilaterally giving the new RSN (*i.e.*, MASN) the local pay television rights to the Orioles' games beginning with the 2007 season.<sup>61</sup>

36. TCR attempts to confuse the issue by asserting that the Maryland litigation “has *nothing* to do with the telecast rights for Nationals games” and implying that the program carriage agreement that MASN has sought with Comcast involves *nothing but* Nationals games.<sup>62</sup> Both the assertion and the implication are untrue. The creation of MASN is a direct result of the Orioles' breach of CSN's contract, and the carriage agreements proposed by MASN to Comcast explicitly contemplated carriage of *both* Nationals games and Orioles games.

37. As noted above, MASN came into existence as an RSN seeking carriage from Comcast and other MVPDs only on or after March 28, 2005.<sup>63</sup> It was created for the express purpose of televising both Orioles' *and* Nationals' games. The March 28, 2005 agreement among MLB, the Orioles, and TCR makes plain that the new network “will have the sole and exclusive rights to present any and all of the Nationals' and the Orioles' baseball games.”<sup>64</sup>

38. The carriage agreements that MASN has offered to Comcast are long-term carriage contracts that include the carriage of future Orioles' games, notwithstanding that

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<sup>61</sup> See CSN First Amended Complaint ¶¶ 60-61.

<sup>62</sup> See Complaint ¶ 53.

<sup>63</sup> See *id.* ¶ 42. See also Timothy Dwyer, *Nats Caught in a TV Rundown*, Wash. Post, at A1 (June 28, 2005) (noting that Orioles owner Peter Angelos “this spring established the Mid-Atlantic Sports Network in partnership with Major League Baseball”).

<sup>64</sup> Complaint, Ex. 1 (MLB-Orioles Agreement § 2.A). See also *id.* (MLB-Orioles Agreement Preamble) (“WHEREAS, the parties hereto desire to resolve various issues and to provide for the presentation and telecast of all available Nationals' baseball games in the Television Territory through a regional sports network along with all available Orioles' baseball games, unifying the games of both Clubs for telecast throughout the entire Television Territory.”).

MASN's asserted rights to these games were acquired in violation of the Orioles' existing contract with CSN. The April 13, 2005 term sheet would require Comcast to carry Nationals' and Orioles' games without condition.<sup>65</sup> MASN subsequently modified its offer to alter the pricing of the carriage agreement depending on whether the Orioles prevailed in the Montgomery County litigation -- *thus explicitly linking the litigation and the proposed carriage agreement*.<sup>66</sup> At no time did MASN ever offer Comcast a contract to distribute *only* Nationals' games. Nor has MASN ever presented a coherent plan for MASN's existence once the breach of CSN's contractual rights is remedied.

39. Moreover, it is ludicrous for TCR to present itself as the champion for the Washington Nationals and its fans.<sup>67</sup> The Baltimore Orioles worked assiduously to block the Nationals from coming to Washington.<sup>68</sup> The Baltimore Orioles threatened to sue Major League Baseball over the relocation of the Expos unless MLB agreed to substantial financial concessions.<sup>69</sup> The Baltimore Orioles demanded, and received, unprecedented control over the

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<sup>65</sup> See Complaint, Ex. 21.

<sup>66</sup> See *id.*, Ex. 28.

<sup>67</sup> See Complaint ¶¶ 55-56.

<sup>68</sup> See Tom Knott, *Owner of Orioles Needs a Lesson in Geography*, Wash. Times (Mar. 17, 2005) ("Mr. Angelos is the person who said, 'There are no real baseball fans in D.C.' Now he is the person who views the region's support of the Nationals as a threat to his baseball empire in Baltimore."); *Televising the Nats*, Wash. Post, at A14 (Mar. 8, 2005) (noting that the main obstacle to getting a TV deal for the Nats, "as throughout much of the struggle to bring the former Montreal Expos to town, is the stubborn resistance of Peter G. Angelos").

<sup>69</sup> See Thomas Boswell, *Angelos May Have Won, But Nationals Can't Lose*, Wash. Post, at D1 (Apr. 1, 2005) (commenting on Peter Angelos' "bare-knuckles legal reputation" and quoting one influential baseball source as saying that "Bullying and suing is what Angelos does for a living"); *Televising the Nats*, Wash. Post, at A14 (Mar. 8, 2005) (commenting on "Mr. Angelos' legendary litigiousness").

TV rights of their most significant economic competitor, the Nationals, as a key condition of ending their decades-long opposition to bringing baseball to Washington.

40. As one industry source noted, the agreement between MLB and the Orioles “is even worse for the Nationals than has been reported.”<sup>70</sup> To wit: the Orioles will have a controlling interest in the Nationals’ TV rights forever, and the license fees being paid to the Nationals are below fair market value.<sup>71</sup> The inequity of the MLB-Orioles deal is further underscored by the fact that the Nationals and the Orioles will receive the same rights fee each year, even though the Washington television market is *twice the size* of Baltimore’s.<sup>72</sup> It is even uncertain whether the eventual owners of the Nationals will own a share of MASN since MLB has reportedly solicited bids for the team with and without the TV rights.<sup>73</sup> Thus, the eventual owners of the Nationals could become the first owners in the history of baseball -- and perhaps

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<sup>70</sup> See Fisher, *Network Deal Gives Angelos Huge Fee*.

<sup>71</sup> See Timothy Dwyer, *Nats Caught in a TV Rundown*, Wash. Post, at A1 (June 28, 2005) (quoting Bob Gutkowski, CEO of Marketing Group International and former president of Madison Square Garden Network as saying: “It is a bad deal for the Nationals no matter how you cut it.”). See also Thomas Heath, *O’s Get Majority of TV Deal*, Wash. Post, at D1 (Apr. 1, 2005) (quoting a source familiar with sports television deals as saying that “the \$21 million rights fee for both cable and over-the-air broadcasts sounded low for the Washington market.”); Jack Evans, *A Little Friendly Competition*, Wash. Times Op-Ed (Mar. 24, 2005) (“On average, television rights earn a new team \$40 million”). The rights fee is less than what Comcast had offered to pay. See Burke Decl. ¶ 7.

<sup>72</sup> See Nielsen Media Research Local Universe Estimates, available at <http://www.nielsenmedia.com/DMAAs.html> (noting that the Washington, D.C. DMA has 2.2 million TV households while the Baltimore DMA has 1.1 million households). Moreover, the Nationals’ strong attendance figures this season suggest a higher rights fee may be warranted. See Thomas Heath, *Nationals’ Expected ’05 Profit Is \$20 Million*, Wash. Post, at A1 (June 21, 2005) (noting that the Nationals are “on track to sell 2.5 million tickets this year”).

<sup>73</sup> See Eric Fisher, *First Round of Bidding for Nats Imminent*, Wash. Times (May 29, 2005) (“Baseball is asking for two bids Tuesday, one for just the club and another for the club and the share in MASN.”). Reportedly, MLB is paying the Orioles \$75 million for the Nationals’ 10% stake in MASN, and MLB will recoup that money as part of its sale of the Nationals. See Eric Fisher, *Network Deal Gives Angelos Huge Fee*, Wash. Times (Apr. 29, 2005). That would place the valuation of MASN at approximately \$750 million, of which Mr. Angelos would own 90%. See *id.*

any major professional sport -- who do not own even a fraction of the local TV rights to their team's games.

41. In sum, the Orioles have succeeded in striking a deal with MLB that will hobble the Nationals financially, particularly given the importance of local TV revenues to the long-term economic success of sports franchises.<sup>74</sup> Moreover, it seems clear that the Orioles have the ability and incentive to use their dominant ownership stake in MASN to disadvantage the Nationals, for example, by giving the Orioles preferential treatment in terms of game selection, marketing, and promotion.<sup>75</sup> It is indisputable that the Nationals and their fans would fare much better if the team controlled its own TV rights -- *just like every other team in Major League Baseball*.<sup>76</sup>

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<sup>74</sup> See *Baseball, TV and the Antitrust Exemption*, Wash. Times (Apr. 23, 2005) ("In an era when the potential on-the-field fortunes of baseball teams rise or collapse with the size of the television contracts they can negotiate off the field, the Nationals have suffered a major financial setback whose relative and absolute dimensions will almost certainly worsen over time[.]"); *id.* ("Forcing the Nationals to become a very, very junior partner in a regional sports network overwhelmingly controlled and operated by Angelos -- an irascible, vengeance-seeking malcontent -- seriously jeopardizes their short- and long-term ability to compete."). See also *The Report of the Independent Members of the Commissioner's Blue Ribbon Panel on Baseball Economics* at 17-21 (July 2000) (noting importance of local TV revenues to MLB teams).

<sup>75</sup> See Thom Loverro, *Why Would Anyone Buy Peter Angelos' Nationals*, Wash. Times (Apr. 30, 2005) ("If Angelos doesn't own the Nationals, he sure is their 'daddy.'").

<sup>76</sup> See Jayson Stark, *Stark: Rumblings & Grumblings*, ESPN.com (Apr. 30, 2005) ("It's hard to think of any franchise that has its games televised by a network controlled by another team. But maybe that's because there aren't any."). See also Phineas Lambert, *Democracy at its Finest*, The Back Page, May 2, 2005 ("Forbes magazine on April 7 valued the Nationals franchise at \$310 million, a sharp increase from its \$145 million valuation in 2004. According to some, that number could drop by \$75 million to \$100 million because of the [MASN] cable contract.").

**4. Even putting to one side the Montgomery County litigation, Comcast has other specific concerns with the MASN service completely unrelated to affiliation.**

42. Comcast detailed a number of questions and concerns with the MASN service during an initial meeting with MASN representatives on April 14, 2005 and in a June 7, 2005 letter to MASN responding to MASN's May 13, 2005 term sheet.<sup>77</sup> For example, Comcast expressed concern regarding the "extremely limited and uncertain programming schedule that will be available on MASN in the foreseeable future."<sup>78</sup> Today, MASN can be expected to televise approximately six hours of programming on any day it is televising a baseball game (*i.e.*, a pre-game show, the game, and a post-game show). The baseball season runs from April to September. This means that there are six months of the year for which MASN has not given any reasonable explanation of what programming it will provide and, even during the baseball season MASN has described programming for only one-quarter of the day on those days when games are televised.<sup>79</sup> Comcast, like any other MVPD, typically looks for a far more developed and complete program lineup when making carriage decisions.<sup>80</sup>

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<sup>77</sup> See Bond Decl. ¶¶ 6-8. See also Complaint, Ex. 34 (June 7, 2005 Letter from Matt Bond, Comcast, to David Gluck, MASN).

<sup>78</sup> See Complaint, Ex. 34 (June 7, 2005 Letter from Matt Bond, Comcast, to David Gluck, MASN).

<sup>79</sup> Despite Comcast's requests for specific information on MASN's programming plans, MASN indicated that the network would consist of unspecified "local, regional, and national sporting events, sports news and information, sports talk, and other related programming" and alluded to the possibility of carrying the games of other major professional sports teams as well as ACC basketball games. See *id.*, Ex. 35 (6/9/05 Letter from David Gluck, MASN, to Matt Bond, Comcast). MASN has not indicated whether the rights to telecast those games are expected to become available for distribution in the Washington-Baltimore region in the foreseeable future. See Bond Decl. ¶ 9.

<sup>80</sup> See Eric Fisher,  *DirecTV Misses 4-1/2 Innings*, Wash. Times (May 26, 2005) ("Unlike other regional sports networks, MASN does not yet operate a 24-hour programming schedule and instead must be reactivated for every Nationals game."). It is also worth noting that MASN's latest term sheet provides two minutes per hour of ad time for the MVPD "exclusive of infomercials and similar paid programming." See Complaint, Ex. 28 at 3 ("Ad Time").  
(footnote continued...)

43. Likewise, Comcast noted the “substantial per subscriber fees sought by MASN” and the potential impact that such fees have on Comcast’s customers.<sup>81</sup> Other MVPDs, including EchoStar and Cox, apparently share these concerns.<sup>82</sup>

44. MASN’s request for carriage would also require Comcast to displace existing programming services. Implicit in MASN’s request for carriage on Comcast’s basic service tier is the understanding that Comcast would drop an existing service to free up capacity for MASN.<sup>83</sup> Indeed, TCR has made this point explicitly in the Complaint. It asks the Commission to order that, if Comcast’s cable systems lack capacity to accommodate MASN, those systems should be required to delete existing programming services to make room for MASN.<sup>84</sup>

45. Most of Comcast’s cable systems are constrained by limited channel capacity on the basic tier and would almost certainly have to drop an existing service to make room for MASN.<sup>85</sup> Doing so would raise two very significant issues for Comcast. First, Comcast would

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(...footnote continued)

The implication is that MASN may be intending to fill its channel lineup with such programming, a prospect that likely would not enhance its chances of gaining carriage with MVPDs. *See also id.*, Ex. 31 (7/19/04 presentation to MLB and Orioles showing that the new RSN will show 800 hours per year of regular season games (including pre- and post-game shows), 5770 hours of shoulder programming, and 2190 hours of infomercials).

<sup>81</sup> See Complaint, Ex. 34 (6/7/05 Letter from Matt Bond, Comcast, to David Gluck, MASN).

<sup>82</sup> See Bond Decl. ¶ 15. Indeed, it is worth noting in this regard that MVPDs have made similar judgments with respect to other team-owned RSNs. For example, EchoStar has elected not to carry YES, the RSN owned by the New York Yankees. Likewise, several MVPDs chose not to carry team-owned networks in Minnesota and North Carolina. *See* R. Thomas Umstead, *Regionals on Prowl for Bobcats Rights*, Multichannel News (July 4, 2005) (noting that RSNs owned by the Charlotte Bobcats, Minnesota Twins, and Minnesota Grizzlies, among others, failed to attract MVPD distribution and went out of business).

<sup>83</sup> See Complaint, Ex. 28 (May 13, 2005 Term Sheet) (requiring carriage of MASN on the first or second most highly penetrated level of video service (*i.e.*, basic or expanded basic)).

<sup>84</sup> See Complaint at 34.

<sup>85</sup> See Bond Decl. ¶ 16. MASN wants one full-time basic tier channel to carry Nationals’ and Orioles’ games as well as access to a second channel it can use on a part-time basis to carry so-called “conflict games” (*i.e.*,  
(footnote continued...))

have to consider whether it can drop existing services consistent with its carriage agreements with those programmers. Many affiliation contracts do not include deletion rights, particularly for basic tier services.<sup>86</sup> Second, Comcast must consider how consumers would react to service deletions. In general, operators typically try to avoid dropping existing services given the consumer unhappiness that can ensue.<sup>87</sup> Indeed, the Commission has previously acknowledged this very concern.<sup>88</sup>

46. In sum, there are numerous compelling reasons why Comcast has declined to carry MASN under the proposed terms,<sup>89</sup> and other MVPDs whose motives are not challenged by TCR have independently decided not to carry MASN at this time. The Commission has made very clear that its rules should not preclude “legitimate business practices common to a

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(...footnote continued)

situations where both teams are televising games at the same time). *See* Complaint, Ex. 28 (May 13, 2005 Term Sheet, “MASN Programming”).

<sup>86</sup> *See* Bond Decl. ¶ 16.

<sup>87</sup> *See id.*

<sup>88</sup> *See, e.g., See In Re Charter Communications et al.: Petition for Waiver of the Requirement to Provide Point of Deployment Modules Contained in Section 76.1204 of the Commission’s Rules*, Mem. Opin. & Order, 15 FCC Rcd. 15075, ¶ 10 (2000) (Cable Services Bureau) (underscoring the importance of avoiding significant program service disruptions). As discussed in greater detail below, *see infra* Section IV.C.2, the program carriage rules also establish special due process rules in instances where program deletions are considered as a remedy.

<sup>89</sup> TCR’s assertion that Comcast is intimidating potential MVPDs with respect to carriage of MASN is baseless. *See* Complaint ¶¶ 59-60. CSN has every right to advise vendors that MASN’s representations regarding future rights to Orioles’ game (and any affiliation agreements entered into based on those representations) evidence a serious and material breach of CSN’s contractual rights, and that CSN has and will continue to enforce and protect its contractual rights to the fullest extent permitted by law. Providing vendors with such notice does not violate the program carriage rules. Likewise, the rules do not preclude Comcast from advising other parties, including members of Congress, about the violation of its contractual rights, particularly given the high-profile nature of this dispute and its interest to residents (even part-time residents) of the greater Washington, D.C. area.

competitive marketplace.”<sup>90</sup> A government decision to compel a cable operator to carry a programming service in the face of these numerous and legitimate reasons not to carry would violate that principle.

47. Moreover, it is now clear that MASN has no serious interest in negotiating a carriage agreement with Comcast. In response to Comcast’s letter of June 7, 2005, MASN sent Comcast a letter on June 9, 2005 providing limited further details about MASN’s programming plans and offering “to continue discussions or provide additional information regarding affiliating with MASN.”<sup>91</sup> And yet, *just five days later* (*i.e.*, on June 14, 2005) the instant Complaint was filed at the Commission.

**C. TCR has failed to demonstrate that Comcast’s conduct has the effect of unreasonably restraining MASN’s ability to compete fairly.**

48. Even assuming *arguendo* that Comcast was motivated only by a desire to harm MASN, Comcast lacks the power to “unreasonably restrain the ability of [MASN] to compete fairly.” First, MASN has overstated Comcast’s position in the geographic areas MASN seeks to serve. Second, and more importantly, there are multiple actual and potential competing distributors of Nationals’ games in the Washington market. Together, Comcast’s limited subscribership reach in MASN’s service area plus the existence of alternative distribution sources prevent Comcast from successfully executing any illegitimate foreclosure strategy.<sup>92</sup>

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<sup>90</sup> See *Program Carriage Order* ¶ 15. See also *id.* ¶ 14 (stating that the Commission’s rules must preserve “the ability of affected parties to engage in legitimate, aggressive negotiations”).

<sup>91</sup> See Complaint, Ex. 35 at 2 (6/9/05 Letter from David Gluck, MASN, to Matt Bond, Comcast).

<sup>92</sup> See *Time Warner Entertainment v. FCC*, 240 F.3d 1126, 1134 (D.C. Cir. 2001) (“[N]ormally a company’s ability to exercise market power depends not only on its share of the market, but also on the elasticities of supply and demand, which in turn are determined by the availability of competition.”).

49. As to the first point, TCR vastly overstates Comcast's subscriber reach in MASN's service area.<sup>93</sup> TCR focuses on Comcast's franchise area to claim that Comcast serves two-thirds of the homes in those areas. This is not the relevant metric. The proper focus is MASN's service area, which, according to TCR, extends from Harrisburg, Pennsylvania to Charlotte, North Carolina and includes "over 6 million subscribers."<sup>94</sup> As MASN admits, the "major cable and satellite distributors" in this territory include "Adelphia Communications, Charter Communications, Comcast, Cox, Time Warner Cable, DirecTV and EchoStar Corporation."<sup>95</sup> Upon information and belief, in MASN's service area, Comcast serves approximately 1.9 million out of nearly 6.3 million TV households, or 30%. Focusing more specifically on the core Washington, D.C. and Baltimore markets, Comcast's subscribership reach is far below the figure included in the Complaint. In the Washington, D.C. DMA, there are 2,241,610 households,<sup>96</sup> and Comcast serves 721,979 of those households,<sup>97</sup> or 32%. In the

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<sup>93</sup> See Complaint ¶ 11. It appears that TCR failed to account for subscribers served by other satellite and cable operators in the area. See, e.g., *In the Matter of TCR Sports Broadcasting Holding, L.L.P. v. Comcast Corporation*, Emergency Petition for Injunctive Relief, File No. \_\_\_\_\_, at 10 (June 14, 2005) ("Emergency Petition") (stating that RCN and DirecTV are "the two other MVPDs in Comcast's franchise area."). However, aside from EchoStar, several cable operators also serve the Washington, D.C. area, including Cox (which has a very large presence in northern Virginia), Time Warner, and Charter. See Thomas Heath, *For Many Area Fans, Nationals Are Out of Sight*, Wash. Post, at D1 (Apr. 29, 2005) (noting that MASN is negotiating with EchoStar, Time Warner, Charter, and Cox, among others). Adelphia also operates cable systems in the greater Washington area. See <http://www.adelphia.com/about/locations.cfm>.

<sup>94</sup> See Complaint, Ex. 20 ¶ 3.

<sup>95</sup> See *id.*

<sup>96</sup> See Nielsen Media Research Local Universe Estimates, available at <http://www.nielsenmedia.com/DMA.html>.

<sup>97</sup> See Comcast/Time Warner *Ex Parte*, filed in MB Dkt. No. 05-192 (June 21, 2005).

combined Baltimore and Washington, D.C. DMAs, there are 3,320,340 households, and Comcast serves 1,341,280 of those households, or 40%.

50. As to the second point, there is *no* area within which Comcast can foreclose distribution of MASN specifically or of Nationals games generally. In every community that Comcast serves, it now faces strong competition from two satellite providers -- DirecTV and EchoStar. In addition, Comcast faces competition from RCN in several communities in the Maryland suburbs and Washington, D.C. and imminent competition from Verizon, which is actively preparing to launch its FiOS TV service in the Washington area in the near future.<sup>98</sup>

51. The head-to-head competition that Comcast faces gives MASN abundant opportunities to reach consumers. The claim that MASN cannot compete fairly in the market today is further undercut by the distribution deals it has cut over the last two months. Although it apparently did not begin to seek MVPD distribution agreements until mid-April 2005, MASN has already secured arrangements for distribution with DirecTV and RCN. DirecTV reportedly serves 1.3 million customers in the area,<sup>99</sup> and is available to nearly 100% of consumers throughout the Washington, D.C. DMA.<sup>100</sup> RCN has approximately 185,000 customers in the area and is available to many hundreds of thousands more homes in Washington, D.C. and the

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<sup>98</sup> For example, Verizon has deployed over 3 million feet of fiber optic cable in Montgomery County, Maryland, and plans to launch its FiOS TV service in near future. *See Verizon Brings Blazing-Fast Computer Connection to Growing Number of Montgomery County Customers*, Verizon New Release (May 5, 2005). Verizon has identified 52 communities in Maryland, 10 in Delaware, and 16 in Virginia where it is deploying its "fiber-to-the-premises" network. *See Verizon Ex Parte*, filed in WC Dkt. No. 04-242, at Att. B-5-6 (June 13, 2005).

<sup>99</sup> *See* Timothy Dwyer, *Nats Caught in a TV Rundown*, Wash. Post, at A1 (June 28, 2005).

<sup>100</sup> The near-ubiquitous availability of DirecTV (and EchoStar, which is equally free to carry MASN if it chooses) is especially harmful to the claim that Comcast is preventing MASN from competing fairly. As the D.C. Circuit has noted, "[i]f an MVPD refuses to offer new programming, customers with access to an alternative MVPD may switch." *See Time Warner Entertainment*, 240 F.3d at 1134.

Maryland suburbs.<sup>101</sup> MASN is also pursuing additional distribution agreements with other cable operators in the greater Washington, D.C. area and, as noted above, its failure to secure such agreements is not the result of Comcast or any other MVPD having unreasonably restrained its ability to compete fairly.

52. In contrast to what it is now saying to the Commission, *MASN itself has acknowledged that the distribution deals it has already struck fully address its foreclosure concerns*. MASN spokesman Vince Wladika has publicly stated that the DirecTV deal “frees Comcast’s stranglehold on Nationals games” and “*gives Nats fans an alternative to see all the games they want.*”<sup>102</sup> He has also said that the DirecTV deal is “great news for Nationals fans because it no longer means they’re held hostage by Comcast and its monopoly.”<sup>103</sup> And MASN’s Executive Vice President and General Manager, Robert Whitelaw, has stated that the DirecTV deal “gave Nationals fans throughout the mid-Atlantic area *total and almost instant access to us.*”<sup>104</sup> As MASN readily acknowledges, based on the distribution deals it has already struck, Nationals’ games are available to customers throughout the Washington, D.C. area.

53. MASN also fails to mention that approximately 80 Nationals’ games are available on Comcast and all other MVPDs in the Washington, D.C. DMA this season.<sup>105</sup> MASN has

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<sup>101</sup> See Thomas Heath, *Orioles Accuse Comcast of Intimidating Cable Prospects*, Wash. Post, at D1 (May 24, 2005).

<sup>102</sup> *DirecTV to Broadcast Nationals Games*, AP (Apr. 29, 2005) (emphasis added).

<sup>103</sup> Eric Fisher, *MASN Makes Debut on DirecTV*, Wash. Times (Apr. 30, 2005).

<sup>104</sup> Jim Williams, *MASN is Here for the Long Run*, The Examiner (May 4, 2005) (emphasis added).

<sup>105</sup> See Eric Fisher, *WDCA Will Air 76 Nats Games*, Wash. Times (Apr. 2, 2005) (“The Nationals’ schedule with WDCA represents what is believed to be the largest collection of over-the-air broadcasts of any team in Major League Baseball.”).

licensed games to UPN Channel 20 (WDCA) and Fox Channel 5 (WTTG).<sup>106</sup> Those broadcast stations are carried on Comcast and other MVPD systems pursuant to the Commission's must-carry rules or retransmission consent agreements.<sup>107</sup> In addition, some Nationals' games can be seen on national telecasts by ESPN and Fox.

54. In short, there are numerous distribution outlets other than Comcast that MASN can and does utilize to present Nationals' games to consumers in the Washington, D.C. television market. Whether MASN has succeeded in securing distribution arrangements with all MVPDs (today, a mere three months after launch) is not a result of any party having the power to "unreasonably" prevent MASN from "competing fairly." No single MVPD, including Comcast, has the power to do this.

#### IV. THE COMMISSION MUST REJECT TCR'S REQUESTS FOR RELIEF.

##### A. **Given that TCR has failed to prove a violation of the program carriage rules, no relief should be granted.**

55. Remedies can only be ordered if a violation is shown.<sup>108</sup> But, as shown above, both counts of the Complaint are without merit. Consequently, TCR is entitled to no relief.

56. On the contrary, Comcast asks the Commission to remedy TCR's misrepresentations and its submission of a frivolous complaint by applying appropriate sanctions to the complainant. As shown above, there is no evidence to support either count of the

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<sup>106</sup> See *id.*

<sup>107</sup> There does not appear to be any reason that MASN could not have licensed additional games to broadcast stations this year.

<sup>108</sup> See 47 U.S.C. § 536(a)(5) (requiring the Commission to establish rules that "provide for appropriate penalties and remedies for violation of this subsection"). See also 47 C.F.R. § 76.1302(g) (establishing "Remedies for Violations").

Complaint. One of those counts is based on allegations that appear to have been made with reckless disregard for the truth, and the other represents such a perversion of the program carriage rules that it must be regarded as frivolous. In addition, TCR's counsel failed to attach a verification to the Complaint. The Commission's rules provide for clear penalties in such instances.<sup>109</sup> TCR should be sanctioned accordingly.

**B. Even if the Commission took the broadest possible view of the prohibitions and incorrectly sided with TCR as to key disputed facts, TCR's proposed remedies are unjustified.**

57. Assuming *arguendo* that the Commission should somehow find a violation of its rules, mandatory carriage would not be the right remedy under the circumstances. The complaint fails to provide the information needed to determine appropriate terms and conditions of carriage.<sup>110</sup> In addition, mandatory carriage would require Comcast to delete two basic tier channels on its systems in the greater Washington area. The Commission has made clear that such relief should only be provided in extraordinary circumstances and only subject to strict due process requirements.<sup>111</sup>

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<sup>109</sup> See 47 U.S.C. § 536(a)(6) (directing the Commission to adopt rules that "provide penalties to be assessed against any person filing a frivolous complaint pursuant to this section"). 47 C.F.R. § 76.6(a)(4) ("If any pleading or other submission is signed in violation of this provision, the Commission shall upon motion or upon its own initiative impose appropriate sanctions." See also *id.* § 76.6(c) ("Any violation of this paragraph shall constitute an abuse of process subject to appropriate sanctions."). Cf. *In re EchoStar Satellite Corp. v. Young Broadcasting, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 15070, ¶ 12 (2001) (admonishing EchoStar for abuse of process).

<sup>110</sup> The Commission should deny TCR's Complaint because TCR failed to satisfy the Commission's procedural requirements with respect to the relief requested. The *Program Carriage Order* states: "If the complainant seeks mandatory carriage, the complaint should specify the desired duration and terms of such carriage, and should include the rationale and any documentary evidence supporting such request." *Program Carriage Order* ¶ 29. All that TCR says is that Comcast should provide carriage on the same terms other MVPDs have provided MASN (plus any other terms the Commission deems appropriate). See Complaint at 33. TCR does not detail, for example, the key carriage terms from MASN's deals with DirecTV and RCN.

<sup>111</sup> See 47 C.F.R. § 76.1302(g) (requiring full Commission approval before an MVPD is ordered to drop an existing programming service).

58. There is also no basis for TCR's request for damages.<sup>112</sup> As an initial matter, neither the program carriage statute nor the Commission's rules authorize the Commission to grant damages as a remedy in a program carriage complaint. Indeed, the *Program Carriage Order* specifically states that: "Available remedies and sanctions include forfeitures, mandatory carriage, or carriage on terms revised or specified by the Commission."<sup>113</sup> Moreover, where the Commission has determined that damages are an appropriate remedy in other cable-related contexts, it has done so as part of a formal rulemaking, not in individual adjudications.<sup>114</sup> The Commission has made no similar determination with respect to program carriage complaints.<sup>115</sup>

**C. The Commission should reject TCR's request for immediate injunctive relief out of hand.**

**1. TCR's request for injunctive relief is flatly inconsistent with the Commission's program carriage rules and general pleading requirements.**

59. The Commission's program carriage rules spell out the pleadings permitted in a program carriage case: a complaint, an answer, and a reply.<sup>116</sup> The Commission's accompanying order underscores the limited scope of the pleadings in program carriage complaints. In particular, the *Program Carriage Order* states that the Commission will decide as

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<sup>112</sup> See Complaint at 34.

<sup>113</sup> See *Program Carriage Order* ¶ 26.

<sup>114</sup> See, e.g., *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Development of Competition and Diversity in Video Programming Distribution and Carriage*, Mem. Opin. & Order on Reconsideration of First Rept. & Order, 10 FCC Rcd. 1902, ¶¶ 16-18 (1994) (finding the Commission has authority to award damages in program access cases).

<sup>115</sup> In particular, the Commission amended its program access rules to provide for a damages remedy, but did not amend the program carriage rules. See *id.*

<sup>116</sup> See 47 C.F.R. §§ 76.1302(a), (d) & (e).

many cases as possible on the basis of a complaint, answer, and reply, and that “*additional pleadings will not be accepted or entertained unless specifically requested by the reviewing staff.*”<sup>117</sup> The staff can gather more information, and it can create a discovery process, and the case may be assigned to an ALJ, but these determinations are to be made “[a]fter reviewing the complaint, answer, and reply[.]”<sup>118</sup>

60. And yet TCR demands immediate injunctive relief.<sup>119</sup> TCR’s attempts to base its request on the general pleading requirements in Section 76.7 are unavailing.<sup>120</sup> Section 76.7(a)(1) makes no reference to injunctive relief,<sup>121</sup> and, while Section 76.7(e)(1) does refer to “temporary” relief, it does not say anything about injunctions.<sup>122</sup> In context, Section 76.7 clearly contemplates that even temporary relief comes *after* due process, not before.

61. Lastly, the Commission’s rules make clear that the specific program carriage rules trump any general provisions in Section 76.7.<sup>123</sup> As detailed below, the program carriage rules do not contemplate the granting of interim relief at this stage of the proceeding.

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<sup>117</sup> *Program Carriage Order* ¶ 23 (emphasis added). *See also id.* ¶ 30 n. 51 (“unless specifically requested by the Commission or its staff, *additional pleadings* such as motions to dismiss or motions for summary judgment *will not be considered.*” (emphasis added and in original)).

<sup>118</sup> *See id.* ¶¶ 31-32.

<sup>119</sup> *See* Emergency Petition at 6.

<sup>120</sup> *See id.*

<sup>121</sup> *See* 47 C.F.R. § 76.7(a)(1) (establishing general rules for petitions).

<sup>122</sup> *See id.* § 76.7(e)(1) (establishing general rules for additional procedures and written submissions).

<sup>123</sup> *See id.* § 76.7, note 4 (“To the extent a conflict is perceived between the general pleading requirements of this section, and the procedural requirements of a specific section, the procedural requirements of the specific section should be followed.”). *See also In the Matter of Biennial Regulatory Review -- Part 76 - Cable Television Service Pleading and Complaint Rules*, Rept. & Order, 14 FCC Rcd. 418, ¶ 8 (1999) (same).

**2. TCR's proposal turns the regular order for considering program carriage complaints on its head.**

62. The program carriage rules state that the Commission can order carriage when and if a complainant has proved its case, not before. In particular, Section 76.1302(g)(1) directs the Commission to order appropriate remedies “*upon completion of such adjudicatory proceeding*” -- not before they begin.<sup>124</sup>

63. Moreover, the Commission has recognized the need to develop a full understanding of facts before acting. In particular, the *Program Carriage Order* states that the rules must “strike a balance that not only prescribes behavior prohibited by the specific language of the statute but also *preserves the ability of affected parties to engage in legitimate, aggressive negotiations*.”<sup>125</sup> It further emphasizes that resolution of complaints will involve focus on “behavior that must be evaluated within the context of *specific facts pertaining to each negotiation*.”<sup>126</sup>

64. It is also important to note that, in cases where compelled carriage would require displacement of existing programming (as would be the case here), even an order of compulsory carriage by the staff or an ALJ -- which would come *after* “completion of such adjudicatory

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<sup>124</sup> See 47 C.F.R. § 76.1302(g)(1) (emphasis added).

<sup>125</sup> *Program Carriage Order* ¶ 14 (emphasis added).

<sup>126</sup> *Id.* (emphasis added). See also *id.* ¶ 24 (noting that the Commission needs to “evaluate contested facts related to the parties’ *specific negotiation*” (emphasis added)). See also *id.* ¶ 15 (noting that the rules must “preserve[] the legitimate aspects of negotiations” and not “preclude[] legitimate business practices common to a competitive marketplace”). As for remedies, “a *case-by-case determination* of the appropriate remedies based on the specific behavior involved in a particular violation provides the only reasonable and meaningful method of enforcing Section 616.” See *id.* ¶ 27 (emphasis added).

proceeding”-- “will not become effective” until full Commission review.<sup>127</sup> This language provides clear evidence that the Commission contemplates following a standard “trial first, sentence afterwards” process, not the other way around.

65. Finally, there is a substantial question about the kind of injunction TCR seeks here. In general, where the Commission does exercise injunctive powers, it acts to preserve or restore the status quo.<sup>128</sup> Comcast is not aware of a single case where the Commission has granted injunctive relief that imposed entirely new obligations on a party, forcing the creation of a business relationship between two entities where none exists today, along the lines of what TCR is seeking here.

**3. Even assuming TCR can seek injunctive relief in this case, it cannot satisfy the applicable legal standard.**

66. The Commission has stated that it will “generally consider the four criteria set forth in *Virginia Petroleum Jobbers* to evaluate requests for preliminary injunctive relief: (1) likelihood of success on the merits; (2) the threat of irreparable harm; (3) the degree of injury to other parties if relief is granted; and (4) that the issuance of the order will further the public interest.”<sup>129</sup> TCR has not satisfied *any* of these requirements, much less *all* of them.

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<sup>127</sup> See 47 C.F.R. § 76.1302(g)(1).

<sup>128</sup> Indeed, the very Commission case cited by TCR is an order to restore the *status quo ante*, not an order requiring a party to do something that it has never done before (in this case, to carry MASN on Comcast’s cable systems). See *In re AT&T Corp., et al.*, Mem. Opin. & Order, 13 FCC Rcd. 14508, ¶¶ 13-14 (1998) (“AT&T”) (enjoining Ameritech and Qwest from continuing to offer a new service for a 90-day period). See also *Cox Cable Communications, Inc. v. Simpson*, 569 F. Supp. 507, 516 (D. Neb. 1983) (“It is established . . . that the principal function of a preliminary injunction is to preserve the status quo pending adjudication of the case on its merits. Furthermore, because an injunction is an extraordinary remedy, it should be granted sparingly and in a manner that accords the maximum possible protection to those affected by its issuance.”).

<sup>129</sup> AT&T ¶ 13 (citing *Virginia Petroleum Jobbers*, 259 F.2d 921 (D.C. Cir. 1958)).

67. First, TCR's claims are without merit. Comcast never requested an equity interest in MASN or TCR, let alone demanded an equity interest in MASN as a condition of carriage. In addition, Comcast has not unlawfully discriminated against TCR or MASN, and MASN is not being unreasonably restrained from competing fairly.

68. Second, TCR has not shown that it will suffer irreparable harm absent a grant of injunctive relief. TCR has provided only redacted versions of the March 28, 2005 agreement among MLB, the Orioles, and TCR, withholding information about the financial arrangements. TCR has provided no information about its costs. TCR has not disclosed the terms of its relationships with DirecTV and RCN or the resulting revenues. In fact, TCR's "Emergency Petition" makes no serious effort of any kind to show irreparable injury to TCR.

69. Third, granting injunctive relief will cause substantial harm to Comcast and its subscribers. Comcast would have to incur substantial costs to carry MASN, including paying very high license fees for MASN and dropping one or more existing programming services to make room for the new network. These costs and programming disruptions would also adversely affect Comcast subscribers.

70. Fourth, issuance of injunctive relief will not further the public interest. As noted, both Congress and the Commission expressly and properly recognized the superiority of private commercial negotiations in addressing relationships between video programmers and program distributors and understood that only exceptional circumstances could justify entangling the Commission in these kinds of issues. This Complaint is certainly not a candidate for relief for the reasons set forth in this answer.

**D. The Commission should deny TCR's motion for discovery and the associated requests for interrogatories and production of documents.**

71. The Commission was very clear in establishing its program carriage rules that the Commission will initially look only to the complaint, answer, and reply to resolve program carriage complaints as expeditiously as possible, and it was equally clear that discovery is not permitted as a matter of right.<sup>130</sup> Congress was explicit that the Commission should “provide for expedited review of any complaints made by a video programming vendor.”<sup>131</sup> To effectuate this directive, the Commission has said that “*additional pleadings will not be accepted or entertained unless specifically requested by the reviewing staff*” and that discovery will be permitted “only as needed on a case-by-case basis, *as determined by the staff*.”<sup>132</sup>

72. Granting TCR's motion for discovery<sup>133</sup> would clearly run counter to congressional directive and Commission policy to consider program carriage complaints on an expedited basis. The wide-ranging discovery that TCR proposes<sup>134</sup> obviously would not contribute to a prompt resolution of this dispute.

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<sup>130</sup> See *Program Carriage Order* ¶ 23 (“Thus, we hereby adopt a system that promotes resolution of as many cases as possible on the basis of a complaint, answer and reply.”) See also 47 C.F.R. 76.7(f)(1) (giving Commission staff discretion as to whether to order discovery in a particular case).

<sup>131</sup> See 47 U.S.C. § 536(a)(4).

<sup>132</sup> See *Program Carriage Order* ¶ 23 (emphasis added).

<sup>133</sup> See *In the Matter of TCR Sports Broadcasting Holding, L.L.P., Complainant, v. Comcast Corporation, Defendant*, Motion for Discovery, Request for Production of Documents, and Request for Interrogatories, File No. \_\_\_\_\_, (June 14, 2005).

<sup>134</sup> See Motion for Discovery (regarding depositions), Request for Production of Documents (regarding seeking documents going back to 2001), and Request for Interrogatories (regarding requests for information unrelated to the Complaint).

73. Abuse of the discovery process is manifest in another respect. As detailed above, TCR's Complaint includes a number of particularly outlandish claims. Most significantly, TCR alleges that Steve Greenberg, a well-respected investment banker with close ties to MLB, was somehow acting as a secret agent for Comcast during discussions in late 2004 between MLB and the Orioles with respect to the Nationals' TV rights. TCR does not provide a scintilla of evidence in the Complaint to support this allegation and, as noted above, Mr. Greenberg and his firm, Allen & Company, have publicly repudiated this allegation in a letter to the Commission.<sup>135</sup> Now, TCR seeks discovery to harass Comcast with respect to a claim that is patently false and that MLB apparently warned TCR was false. This is a clear abuse of the discovery process.

74. In sum, there is simply no basis for the Commission to initiate discovery here as the pleadings provide all the information the Commission needs to make a decision in this case.<sup>136</sup> TCR's motion should be dismissed with prejudice.

## V. RESPONSES TO NUMBERED PARAGRAPHS

¶ 1. Paragraph 1 of the Complaint consists of legal conclusions to which no response is required. Nonetheless, Comcast vigorously denies that it has violated § 76.1301(a) or (c) of the Commission's rules.

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<sup>135</sup> See Greenberg Declaration ¶ 4; Allen Letter at 1. Comcast has repudiated this accusation, as well. See also Burke Decl. ¶ 10.

<sup>136</sup> See *RCN Telecom Serv. v. Cablevision Sys. Corp.*, Memorandum Opinion & Order, 16 FCC Rcd. 12048, ¶¶ 19-20 (2001) (upholding Cable Services Bureau's denial of RCN's request for discovery and supporting the Bureau's decision "[b]ased on the record before it"); *RCN Telecom Serv. v. Cablevision Sys. Corp.*, Memorandum Opinion & Order, 14 FCC Rcd 17093, ¶ 27 (2001) (Cable Servs. Bur.) (stating that the "pleadings and supporting affidavits submitted in these proceedings provide sufficient detail" and that the Bureau therefore did "not believe that discovery [was] necessary to supplement the record"), *aff'd* 16 FCC Rcd. 12048 (2001); *EchoStar Communications Corp. v. Comcast Inc.*, 14 FCC Rcd 2089, ¶ 31 (1999) (Cable Servs. Bur.) (denying EchoStar's motion for discovery because it failed to persuade the Bureau "that discovery [was] necessary or that the record compiled . . . [was] insufficient").

¶ 2. Comcast admits that TCR purports to be a Maryland limited liability partnership with its principal place of business in Baltimore, Maryland, and that TCR was a party to a 1996 agreement with the Orioles that licenses rights to CSN. Comcast is without sufficient knowledge or information to admit or deny the remaining allegations of the first through fourth, sixth, and seventh sentences of paragraph 2 of the Complaint and therefore denies those allegations. Comcast denies the fifth sentence insofar as it suggests that TCR began operating as an RSN in 2001, but otherwise is without sufficient knowledge. The eighth sentence of paragraph 2 of the Complaint is a legal conclusion to which no response is required.

¶ 3. Comcast admits the first sentence of paragraph 3 of the Complaint. Comcast denies the second sentence; Comcast's phone number is (215) 665-1700. Comcast admits the fact asserted at the beginning of the third sentence of paragraph 3 of the Complaint, but the remainder of the sentence is a legal conclusion to which no response is required. Comcast admits the fourth sentence of paragraph 3 of the Complaint. Comcast admits that it owns or controls several RSNs; the remainder of the fifth sentence of paragraph 3 of the Complaint is a legal conclusion to which no response is required.

¶ 4. Comcast admits paragraph 4 of the Complaint.

¶ 5. Comcast admits, as asserted in paragraph 5 of the Complaint, that a declaration purporting to have been executed by Joe Foss is attached as Exhibit 4. Comcast is without sufficient knowledge or information to admit or deny whether that declaration was in fact executed by Mr. Foss.

¶ 6. Paragraph 6 of the Complaint is a legal conclusion to which no response is required. Nonetheless, Comcast denies that it possesses "dominant market position," that it has

“misuse[d]” its position, that it has discriminated in favor of an affiliated programming vendor, and that it has “attempt[ed] to extract an equity interested in a rival programming vendor.”

¶ 7. Comcast denies the allegation in the first sentence of paragraph 7 of the Complaint but admits that it provides cable services in many of the communities of the Washington, D.C. metropolitan area. Comcast admits the second and third sentences of paragraph 7 of the Complaint, except to note that the Orioles also are a party to the contract with CSN regarding the rights to Orioles’ games through the 2006 season. Concerning the fourth and sixth sentences of paragraph 7, Comcast acknowledges that CSN and MASN “compete . . . with one another” for revenues associated with televising sporting events but notes that the sporting events, other programming, audiences, advertisers, and distributors for the two networks are by no means identical. Comcast is without sufficient knowledge or information to admit or deny the allegations of the fifth sentence of paragraph 7 of the Complaint and therefore denies those allegations.

¶ 8. Most of the discussion in paragraph 8 of the Complaint is erroneous, misleading, speculative, and/or irrelevant. With respect to the first sentence of paragraph 8, Comcast admits only that it proposed a rights deal to carry Nationals’ games on CSN, but denies the remainder of the sentence. Comcast denies the second through ninth sentences of paragraph 8 of the Complaint.

¶ 9. Paragraph 9 of the Complaint presents legal conclusions to which no response is required.

¶ 10. Comcast is without sufficient knowledge or information to admit or deny the allegations of the first sentence of paragraph 10 of the Complaint and therefore denies those allegations. Comcast has received what purports to be a copy of an “Emergency Petition for

Temporary Injunctive Relief,” but does not know that it was in fact filed with the Commission; Comcast also notes that the Commission’s program carriage rules do not contemplate any pleadings other than a complaint, answer, and reply, except as may be specifically requested by the staff. The second and third sentences of paragraph 10 of the Complaint are legal conclusions to which no response is required.

¶ 11. Comcast admits the first and second sentences of paragraph 11 of the Complaint. Comcast denies the allegations in the third and fourth sentences of paragraph 11 of the Complaint; it appears that TCR has mistakenly assumed that the systems whose Form 325s it reproduced in Exhibit 7 of the Complaint are located entirely within the Washington DMA (within which Comcast in fact has approximately 722,000 customers<sup>137</sup>). With respect to the third sentence, TCR has overstated the number of homes that Comcast passes in the Washington, D.C. DMA, probably as a result of assuming that the Comcast entities that serve homes within the DMA have no other facilities outside the DMA. With respect to the fourth sentence, Comcast has approximately 722,000 customers in the Washington, D.C. DMA, not the 817,000 alleged by TCR. Comcast is without sufficient knowledge or information to admit or deny the allegations of the fifth and sixth sentences of paragraph 11 of the Complaint and therefore denies those allegations.

¶ 12. Comcast admits paragraph 12 of the Complaint, except that it denies the assertion in the first sentence that “Comcast has an ownership interest in *many* of the networks whose

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<sup>137</sup> See Comcast/Time Warner *Ex Parte*, filed in MB Dkt. No. 05-192 (June 21, 2005).

programming it carries....” A more accurate statement would be that Comcast has ownership interests in a small fraction of the networks whose programming it carries.

¶ 13. Comcast admits paragraph 13 of the Complaint, but, with respect to the first sentence of paragraph 13, notes that the Orioles are a party to the contract with CSN and TCR, and, with respect to the second sentence of paragraph 13, clarifies that CSN’s rights to Washington Capitals’ telecasts runs through the 2016-2017 NHL season and CSN’s rights to Washington Wizards’ telecasts runs through at least the 2011-2012 NBA season.

¶ 14. Comcast admits the first sentence of paragraph 14 of the Complaint but would clarify that CSN does not sell “Orioles games” to other MVPDs; rather, CSN sells other MVPDs the rights to distribute to their customers a network that operates 24 hours a day, 365 days a year and whose programming *includes* Orioles games. Comcast denies the second sentence and notes that CSN is available to other MVPDs in the Washington, D.C. metropolitan area, including, but not limited to DirecTV, EchoStar, and RCN, which compete directly with Comcast for customers.

¶ 15. Comcast admits the first sentence of paragraph 15 of the Complaint, but notes that the Orioles also are a party to the 1996 license agreement. Comcast is without sufficient knowledge or information to admit or deny the allegations of the second sentence of paragraph 15 of the Complaint and therefore denies those allegations.

¶ 16. Comcast admits paragraph 16 of the Complaint, except that the name of the entity to which HTS changed its name is Comcast SportsNet Mid-Atlantic L.P.

¶ 17. Comcast admits the first through the fifth sentences of paragraph 17 of the Complaint, except to note that CSN negotiated with the Orioles for an extension of the 1996 agreement with the Orioles, TCR, and CSN and that the Orioles were a party to the 2001

agreement regarding rights to over-the-air telecasts. Comcast is without sufficient knowledge or information to admit or deny the allegations of the sixth sentence of paragraph 17 of the Complaint and therefore denies the allegations. Comcast denies the seventh sentence of paragraph 17 of the Complaint.

¶ 18. Comcast denies the first sentence of paragraph 18. Comcast is without sufficient knowledge or information to admit or deny the allegations of the second through the fourth sentences of paragraph 18 of the Complaint and therefore denies those allegations, except that Comcast denies that TCR had any rights to retain during the time period referenced in paragraph 18 and notes that the first sentence of paragraph 43 is inconsistent with the claim here that TCR (rather than the Orioles) possessed rights to post-2006 Orioles' games. Comcast denies the fifth sentence of paragraph 18 of the Complaint.

¶ 19. Comcast denies the allegations in paragraph 19.

¶ 20. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 20 of the Complaint and therefore denies those allegations.

¶ 21. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 21 of the Complaint and therefore denies those allegations.

¶ 22. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 22 of the Complaint and therefore denies those allegations.

¶ 23. Comcast is without sufficient knowledge or information to admit or deny the allegation of the first sentence of paragraph 23 of the Complaint and therefore denies the allegation. Comcast admits the remaining sentences of paragraph 23.

¶ 24. Comcast denies paragraph 24 of the Complaint. Comcast only proposed a rights deal to carry Nationals' games on CSN. Comcast specifically rejected a proposal made by MLB

involving the formation of a new RSN to carry Nationals' and Orioles' games that would be jointly owned by Comcast and the Baltimore Orioles.

¶ 25. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 25 of the Complaint and therefore denies those allegations.

¶ 26. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 26 of the Complaint and therefore denies those allegations.

¶ 27. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 27 of the Complaint and therefore denies those allegations.

¶ 28. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 28 of the Complaint and therefore denies those allegations.

¶ 29. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 29 of the Complaint and therefore denies those allegations.

¶ 30. Comcast admits the first sentence of paragraph 30 of the Complaint but only to the extent that Comcast worked very briefly with Allen & Company on a particular matter in 2003; the allegation is denied to the extent that it implies Comcast has been a continuing client of Allen & Company. Comcast admits the second sentence of paragraph 30 of the Complaint but emphasizes that Allen & Company represented Adelphia, not Comcast, in the acquisition described. With respect to the third sentence of paragraph 30 of the Complaint, Comcast admits that it filed the referenced Form 8-K but denies the allegation that this reflects a "relationship" between Comcast and Allen & Company; as the 8-K indicates, Allen & Company's fees were to be paid by Adelphia. Comcast denies the fourth sentence of paragraph 30 of the Complaint. Comcast is without sufficient knowledge or information to admit or deny the allegations of the fifth and sixth sentences of paragraph 30 of the Complaint and therefore denies those allegations;

however, Comcast specifically denies the implication that Comcast was a client of Allen & Company during the events in questions. Comcast denies the allegation in the seventh sentence of paragraph 30 of the Complaint; Greenberg has not acted, at any time, as an agent for Comcast.

¶ 31. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 31 of the Complaint and therefore denies those allegations.

¶ 32. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 32 of the Complaint and therefore denies those allegations.

¶ 33. Comcast denies the first sentence of paragraph 33 of the Complaint insofar as it suggests that Mr. Greenberg represented Comcast in the transaction to create an RSN to televise New York Mets baseball games. In fact, Mr. Greenberg represented the New York Mets, not Comcast or Time Warner, in that transaction. Comcast admits the remainder of paragraph 33 of the Complaint, but clarifies that it holds an approximately 11% interest in the new RSN.

¶ 34. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 34 of the Complaint and therefore denies those allegations.

¶ 35. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 35 of the Complaint and therefore denies those allegations.

¶ 36. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 36 of the Complaint and therefore denies those allegations.

¶ 37. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 37 of the Complaint and therefore denies those allegations.

¶ 38. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 38 of the Complaint and therefore denies those allegations.

¶ 39. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 39 of the Complaint and therefore denies those allegations.

¶ 40. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 40 of the Complaint and therefore denies those allegations.

¶ 41. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 41 of the Complaint and therefore denies those allegations.

¶ 42. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 42 of the Complaint and therefore denies those allegations.

¶ 43. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 43 of the Complaint and therefore denies those allegations.

¶ 44. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 44 of the Complaint and therefore denies those allegations.

¶ 45. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 45 of the Complaint and therefore denies those allegations, but Comcast notes that the first sentence of paragraph 43 is inconsistent with the claim here that "TCR . . . would continue to hold all rights to Orioles games"; rather, the Orioles would transfer their post-2006 rights to Orioles' games to MASN.

¶ 46. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 46 of the Complaint and therefore denies those allegations.

¶ 47. Comcast admits paragraph 47 except that Comcast is without sufficient knowledge or information to admit or deny the allegation that the Orioles and MLB negotiated "to preserve the financial viability of the Orioles franchise" and therefore denies that allegation.

¶ 48. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 48 of the Complaint and therefore denies those allegations.

¶ 49. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 49 of the Complaint and therefore denies those allegations, except to note that Comcast understands that MASN has contacted MVPDs and entered into agreements for distribution of MASN.

¶ 50. Comcast admits the first sentence of paragraph 50 of the Complaint, except that (1) Comcast denies receiving a proposal from TCR (as opposed to MASN) and (2) Comcast denies that MASN is a "newly renamed regional sports network." MASN did not come into existence as an RSN until after the March 28, 2005 agreement among MLB, the Orioles, and TCR. Comcast admits the second sentence of paragraph 50 of the Complaint, except that (1) Comcast denies receiving a proposal from TCR (as opposed to MASN) and (2) Comcast denies that the CSN contract with TCR and the Orioles "expir[es]" in 2007. Specifically, Paragraph 16 of that agreement (which grants CSN exclusive rights to negotiate an extension to the agreement through November 1, 2005 and to match competing offers received after November 1, 2005 for the rights to televise Orioles' games beginning with the 2007 season) states that such paragraph "will survive expiration of this Letter Agreement." Comcast admits the third sentence of paragraph 50 of the Complaint. Comcast is without sufficient knowledge or information to admit or deny the allegations of the fourth sentence of paragraph 50 of the Complaint and therefore denies those allegations; Comcast otherwise denies the remainder of the sentence.

¶ 51. Comcast denies the first sentence of paragraph 51 of the Complaint. With respect to the second sentence of paragraph 51 of the Complaint, Comcast admits only that CSN filed

the lawsuit whose Complaint is reproduced as Ex. 22, that CSN sent the letters reproduced as Exhibits 23 and 25, and that the letter reproduced as Ex. 24 was sent by Comcast. Comcast denies the remaining allegations in paragraph 51.

¶ 52. Comcast admits that CSN brought suit against TCR, MASN, the Orioles, and MLB on April 21, 2005, but denies the remaining allegations in paragraph 52 of the Complaint.

¶ 53. Comcast denies paragraph 53 of the Complaint.

¶ 54. Comcast admits the first sentence of paragraph 54 of the Complaint, but denies the implication that MASN's proposal to Comcast was limited to distribution only of Nationals' games. Comcast admits the second and fourth sentences of paragraph 54 of the Complaint. Comcast is without sufficient knowledge or information to admit or deny the allegations of the third sentence of paragraph 54 of the Complaint and therefore denies those allegations. Comcast denies the fifth sentence of paragraph 54 of the Complaint but agrees that MASN's proposal, if accepted by Comcast, would have compelled Comcast to carry MASN through March 31, 2011 regardless of the outcome of the litigation in Maryland state court.

¶ 55. Comcast denies the first and second sentences of paragraph 55 of the Complaint. Comcast admits the third, fourth, and seventh sentences of paragraph 51 of the Complaint. The remainder of paragraph 55 of the Complaint consists of legal conclusions to which no response is required; nonetheless, Comcast denies the fifth, sixth, eighth, and ninth sentences of paragraph 55 of the Complaint.

¶ 56. To the extent the first sentence of paragraph 56 of the Complaint contains factual assertions, Comcast denies it. To the extent the first sentence of paragraph 56 of the Complaint contains legal conclusions, no response is required; nonetheless, Comcast specifically denies it. With respect to the second sentence of paragraph 56, Comcast admits that it carries CSN on its

Washington area cable systems, but denies the rest of the sentence. Comcast denies the third through the seventh sentences of paragraph 56 of the Complaint.

¶ 57. Comcast admits paragraph 57 of the Complaint except insofar as it suggests that CSN is sold mainly to MVPDs that do not compete directly with Comcast; RCN (incorrectly referred to as Starpower in the second sentence) and the major satellite services (referred to in the third) do in fact compete directly with Comcast.

¶ 58. With respect to the first sentence of paragraph 58 of the Complaint, Comcast admits only that CSN consulted with Comcast before sending letters to Washington area MVPDs apprising those MVPDs of the breach of contract by TCR and the Orioles, and tortious interference with contract by MLB and MASN. Comcast denies the second sentence of paragraph 58 of the Complaint; the contents of CSN's letters, as reflected in Ex. 23, speak for themselves.

¶ 59. Comcast denies the first sentence of paragraph 59 of the Complaint insofar as it refers to the intent of CSN's letter. Comcast is without sufficient knowledge or information to admit or deny allegations that TCR had approached other distributors or, if so, what "package of games" it offered them, and, therefore, Comcast denies the remainder of the first sentence of paragraph 59 of the Complaint. Comcast is without sufficient knowledge or information to admit or deny the allegations of the second sentence of paragraph 59 of the Complaint and therefore denies those allegations. Comcast admits the third sentence of paragraph 59 of the Complaint except insofar as it claims that that CSN "threatened DirecTV with legal action." As to that, Comcast denies the allegation.

¶ 60. The first sentence of paragraph 60 of the Complaint presents legal conclusions to which no response is required but Comcast denies the claims of “intimidation” and “threats.” Comcast denies the second, third, and fourth sentences of paragraph 60 of the Complaint.

¶ 61. Comcast admits paragraph 61 of the Complaint insofar as it claims that Comcast communicated with one or more members of Congress, but denies the allegations in the first sentence that CSN “barraged local [MVPDs] with threatening letters” and in the second sentence that the cited letter “contained deliberately false statements intended to harm TCR.”

¶ 62. Comcast admits the first sentence in paragraph 62 of the Complaint but denies the remainder of the paragraph.

¶ 63. Comcast denies paragraph 63 of the Complaint.

¶ 64. Comcast denies paragraph 64 of the Complaint, except that it admits that it has described MASN as a “newly created local sports network named Mid-Atlantic Sports Network (MASN).”

¶ 65. Comcast denies Paragraph 65 of the Complaint.

¶ 66. Comcast denies the first and third sentences of paragraph 66 of the Complaint. With respect to the second sentence of paragraph 66, Comcast admits that it sent a letter to some members of Congress. Comcast denies the remaining allegations of paragraph 66 of the Complaint.

¶ 67. Comcast repeats and incorporates by references here its answers to paragraphs 1 through 66 of the Complaint above.

¶ 68. Paragraph 68 of the Complaint is a legal conclusion to which no response is required.

¶ 69. Comcast admits paragraph 69 of the Complaint.

¶ 70. Comcast generally admits paragraph 70 of the Complaint except for the assertion that the regulation codified at 47 C.F.R. § 76.1301(c) is “relevant” to MASN’s claims; that is a legal conclusion to which no response is required.

¶ 71. Paragraph 71 of the Complaint is a legal conclusion to which no response is required.

¶ 72. Paragraph 72 of the Complaint is a legal conclusion to which no response is required.

¶ 73. Paragraph 73 of the Complaint is a legal conclusion to which no response is required.

¶ 74. The first, second, fourth, sixth, seventh, and ninth sentences of paragraph 74 of the Complaint are legal conclusions to which no response is required. Comcast denies the third and the eighth sentences of paragraph 74 of the Complaint. Comcast admits the fifth sentence of paragraph 74 of the Complaint.

¶ 75. Comcast repeats and incorporates by references here its answers to paragraphs 1 through 74 of the Complaint above.

¶ 76. The first sentence of paragraph 76 of the Complaint is a legal conclusion to which no response is required, except that Comcast denies that it has “attempted to cover its tracks by dealing through intermediaries” and that “the consistent pattern of its negotiating efforts has been to extract an equity position in TCR.” The remainder of paragraph 76 of the Complaint consists of legal conclusions to which no response is required; nonetheless, Comcast specifically denies them.

¶ 77. Paragraph 77 of the Complaint contains legal conclusions to which no response is required. Comcast denies the fourth and fifth sentences of paragraph 77 of the Complaint.

¶ 78. Comcast admits the first sentence of paragraph 78 of the Complaint but clarifies that its only proposal to MLB was a “rights” deal, with Comcast paying to acquire the pay TV rights to produce and air Nationals games, and MLB in turn licensing those rights and collecting license fees; Comcast would not have acquired any new “equity interest in a network” but would of course have retained its ownership of CSN. Comcast is without sufficient knowledge or information to admit or deny the allegations of the second sentence of paragraph 78 of the Complaint and therefore denies those allegations.

¶ 79. Comcast denies the first sentence of paragraph 79 of the Complaint. Comcast is without sufficient knowledge or information to admit or deny the allegations of the second and third sentences of paragraph 79 of the Complaint and therefore denies those allegations.

¶ 80. Comcast denies the first sentence of paragraph 80 of the Complaint. Comcast is without sufficient knowledge or information to admit or deny the allegations of the second sentence of paragraph 80 of the Complaint and therefore denies those allegations. The third sentence of paragraph 80 of the Complaint is a legal conclusion to which no response is required.

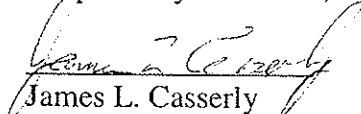
¶ 81. Comcast denies the first and second sentence of paragraph 81 of the Complaint. The third sentence of paragraph 81 of the Complaint is a legal conclusion to which no response is required.

## VI. CONCLUSION

TCR's program carriage Complaint should be dismissed with prejudice for the reasons set forth above.

- As to TCR's first claim, Comcast has never demanded an equity interest in MASN as a condition of carriage, nor did it ever demand an ownership interest in TCR prior to the creation of MASN in March 2005. TCR's claims regarding Mr. Greenberg are completely without merit. TCR knew this was the case, and yet made the claim anyway. TCR should be sanctioned by the Commission for knowingly making false statements in its Complaint.
- As to TCR's second claim, Comcast did not unlawfully discriminate against MASN on the basis of affiliation. Comcast's decision not to carry MASN reflects entirely legitimate business judgments under the circumstances, including, among other things, the proposed carriage terms, the lack of a defined program schedule for MASN, and the breach of Comcast's contractual rights regarding the Orioles' games by TCR, the Orioles, and MLB. The fact that other MVPDs, including EchoStar and Cox, have also opted against carrying MASN further weakens TCR's claim.
- The Commission should also deny TCR's ancillary requests with respect to injunctive relief and discovery. The requests are improper under the Commission's rules and otherwise unwarranted.

Respectfully submitted,



James L. Casserly

Michael H. Hammer

Jonathan A. Friedman

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Washington, D.C. 20006-1238

(202) 303-1000

*Attorneys for Comcast Corporation*

July 14, 2005

### **CERTIFICATE OF SERVICE**

I, Robin Smith, hereby certify that, on July 14, 2005, copies of the attached "Answer of Comcast Corporation" were served by hand delivery or First-Class Mail, postage prepaid, to the following:

#### **FIRST CLASS MAIL:**

Michael K. Kellogg  
Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C.  
1615 M Street, N.W.  
Washington, D.C. 20036  
(202) 326-7900

#### **HAND DELIVERY:**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
c/o Natek, Inc.  
236 Massachusetts Avenue, N.E.  
Suite 110  
Washington, D.C. 20002

Donna C. Gregg  
Chief, Media Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

  
Robin Smith

**VERIFICATION**

I, James L. Casserly, do hereby declare and state under penalty of perjury as follows:

1. I am a Partner in the law firm of Willkie Farr & Gallagher LLP and
2. I have read the foregoing Answer of Comcast Corporation ("Answer"). To the best of my personal knowledge, information, and belief, the statements made in this Answer other than those of which official notice can be taken, are well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. This Answer is not interposed for any improper purpose.

7/14/05  
July 14, 2005

James L. Casserly  
James L. Casserly

**EXHIBIT 1:**

**DECLARATION OF STEPHEN B. BURKE**  
**EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER, COMCAST**  
**CORPORATION; PRESIDENT, COMCAST CABLE COMMUNICATIONS, LLC.**

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matter of	)	
	)	
TCR Sports Broadcasting Holding, L.L.P.,	)	File No.
	)	
Complainant	)	
	)	
v.	)	
	)	
Comcast Corporation,	)	
	)	
Defendant	)	

**DECLARATION OF STEPHEN B. BURKE**

1. My name is Stephen B. Burke. My business address is 1500 Market Street, Philadelphia, Pennsylvania 19102.
  
2. I am Executive Vice President and Chief Operating Officer, Comcast Corporation, and President, Comcast Cable Communications, LLC. I manage a team of 59,000 employees who serve more than 21 million cable customers. I oversee all aspects of Comcast's cable and programming businesses. Prior to joining the Comcast, I served with The Walt Disney Company as President of ABC Broadcasting.
  
3. I was personally involved in discussions with Major League Baseball ("MLB") regarding the television rights to Washington Nationals' game between September 2004 and March 2005.
  
4. On September 14, 2004, MLB announced it was relocating the Montreal Expos to Washington, D.C. Over the next six months, I participated in several discussions with MLB regarding Comcast's interest in carrying Nationals' games. At no time during any such discussions did I ever propose, much less demand, that Comcast should receive equity in TCR, either "in exchange for carriage" or otherwise.

5. The main focus of my discussions with MLB was on a proposal, initiated by Comcast, to carry Nationals' games on Comcast SportsNet Mid-Atlantic ("CSN"). Under that proposal, Nationals' and Orioles' games would be carried on CSN and, when games were on at the same time, on an "overflow" channel. This would have been a "rights" deal only, with Comcast paying to acquire the pay TV rights to produce and air Nationals games, and MLB in turn licensing those rights and collecting license fees. My proposal included no transfer of "equity" from or to Comcast and contemplated no "carriage" of any network other than ones we were already carrying.

6. I underscored that CSN was a logical choice for carrying Nationals' games in the greater Washington, D.C. market, given its successful track record of producing telecasts of games (as well as pre- and post-game shows) for professional sports teams in the region (including the Baltimore Orioles, Washington Wizards, and Washington Capitals), its continuing rights to telecast the Orioles, Wizards and Capitals, its strong brand name with sports fans in the area, and its broad distribution on cable, satellite, and other multichannel video programming distribution ("MVPD") systems. In short, I emphasized that CSN could hit the ground running with the Nationals. This was an important consideration since the Nationals would begin playing in Washington, D.C. in the Spring of 2005 and there would be a relatively short time frame in which arrangements to televise the games could be finalized.

7. With respect to professional baseball, I noted CSN's longstanding relationship with the Baltimore Orioles. CSN (previously named Home Team Sports) has carried Orioles' games for more than 20 years. I underscored the fact that CSN pays substantial rights fees to carry the Orioles' games and invests significant resources to produce, distribute, and market these games throughout the Washington/Baltimore region. I made clear during those discussions

with MLB that CSN would be as strongly committed to the success of the Nationals. I emphasized that Comcast would dedicate similar resources to produce and distribute the highest quality Nationals' programming to fans and was willing to pay a substantial rights fee to carry Nationals games. Indeed, the rights fee offer presented by Comcast exceeds the fee that MASN is reportedly paying the Nationals.

8. At one point early in the discussions, MLB representatives presented a different proposal. Specifically, they raised the possibility of forming a new network to carry Nationals' and Orioles' games that would be jointly owned by Comcast and the Baltimore Orioles. I specifically rejected this proposal.

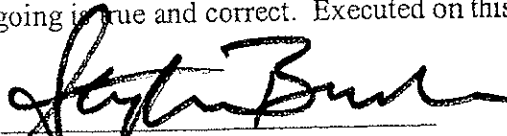
9. No proposals other than the two discussed above arose in the course of my discussions with MLB. Nor has Comcast ever sought an ownership interest in TCR. As noted, my proposal to MLB focused on CSN acquiring the TV rights to the Nationals. Comcast's sole objective was to procure rights relating to the Nationals, and TCR possessed no such rights.

10. During the approximately six-month period that Comcast negotiated with MLB, it conducted such negotiations through me. At no time did Comcast hire any outside consultant to help with these negotiations. There is absolutely no truth to TCR's claims that Comcast was conducting its negotiations through Mr. Steve Greenberg or that Mr. Greenberg was involved in any way on behalf of Comcast. Throughout this period, Mr. Greenberg -- both in his discussions with Comcast and in his discussions with the Orioles -- was representing *MLB*.

11. I am not aware of any circumstances where Comcast has hired Mr. Greenberg to represent, consult, or provide any other service for Comcast. In all of the dealings I have had with him since I joined Comcast, Mr. Greenberg has worked for the other side. As noted, he represented MLB in our discussions regarding the Nationals' TV rights. Likewise, he

represented Adelphia in the transaction with Comcast and Time Warner, and he represented the New York Mets in the negotiations to create a new RSN in New York. Comcast did speak with Allen & Company in August 2003 when Comcast was considering making a bid for Vivendi, but Mr. Greenberg was not involved in any way in that matter and Comcast worked only briefly with Allen & Company on the project.

14 I declare under penalty of perjury that the foregoing is true and correct. Executed on this day of July, 2005.

  
\_\_\_\_\_  
Stephen B. Burke

**EXHIBIT 2:**

**DECLARATION OF MADISON BOND**  
**EXECUTIVE VICE PRESIDENT FOR PROGRAMMING**  
**COMCAST CABLE COMMUNICATIONS, LLC**

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matter of	)	
	)	
TCR Sports Broadcasting Holding, L.L.P.,	)	File No.
	)	
Complainant	)	
	)	
v.	)	
	)	
Comcast Corporation,	)	
	)	
Defendant	)	

**DECLARATION OF MADISON BOND**

1. My name is Madison Bond. My business address is 1500 Market Street, Philadelphia, Pennsylvania 19102.
2. I have served as Executive Vice President for Programming at Comcast Cable Communications, LLC, an indirect subsidiary of Comcast Corporation ("Comcast") since December 2002. I am responsible for the negotiation of programming agreements for cable systems serving more than 21 million customers. Before joining Comcast, I served as Executive Vice President of Distribution for the Yankees Entertainment & Sports Network (YES) and prior to that was Executive Vice President for Programming at AT&T Broadband and President of Satellite Services, Inc.
3. I was personally involved in discussions with Mid-Atlantic Sports Network ("MASN") regarding possible carriage of MASN on Comcast's cable systems between April and June of this year.
4. On March 28, 2005, upon information and belief, MLB, the Orioles, and TCR reached an agreement to create a joint venture to produce and exhibit Nationals' games and,

starting with the 2007 season, Orioles' games on a new RSN (now MASN). This agreement and the creation of MASN are the subject of a breach-of-contract complaint filed by CSN against the Orioles, TCR, and MLB in Maryland state court.

5. Since MLB and the Orioles reached the agreement on March 28, 2005 and MASN launched as an RSN, Comcast has had several communications with MASN regarding possible carriage of the network on Comcast's cable systems in the greater Washington-Baltimore region.

6. I had an initial discussion with Mr. David Gluck, a consultant handling negotiations for MASN, in early April 2005. We agreed that MASN would send Comcast a draft term sheet (which was sent on April 13, 2005), and that the parties would meet to discuss the proposed term sheet on April 14, 2005. Comcast met with MASN representatives in Philadelphia on April 14, 2005 to review and discuss MASN's initial carriage proposal. I and Alan Dannenbaum, Senior Vice President for Programming at Comcast, attended that meeting on behalf of Comcast. At that meeting, Mr. Joseph Foss, Vice Chairman of Baltimore Orioles Limited Partnership, made a presentation regarding the new network. Before discussing MASN's initial term sheet for carriage of MASN, Mr. Foss stated that MASN was committing to potential distributors that the Orioles' games would be distributed on MASN commencing with the 2007 season and that there was no possibility that MASN would not have the Orioles' games from the 2007 season forward absent a strike or other labor dispute. Hence, Mr. Foss noted that the proposed term sheet included fees for both Nationals' and Orioles' games.

7. The parties then discussed MASN's proposed term sheet, including, among other things: the number of Orioles' and Nationals' games to be delivered on MASN and/or a second channel for "overflow" games (for days where Orioles and Nationals games aired at the same time); over-the-air distribution of certain games; the length of the term; the requirement for

Comcast to place MASN and overflow games on the basic or expanded basic tier of service; the proposed rate structure; other programming that MASN plans to air on the network; MASN's plans for high-definition, video-on-demand, and interactive programming; territorial restrictions on distribution of the games in the greater Washington-Baltimore region; and marketing and launch support for the network. I concluded the meeting by thanking Mr. Foss and the other MASN representatives for their proposal and told them that Comcast would review the proposal and contact them with our response.

8. Subsequently, MASN sent Comcast a second term sheet on May 13, 2005. Comcast carefully reviewed the proposal. On June 7, 2005, I sent Mr. Gluck a letter raising a number of questions and issues regarding the revised term sheet. In particular, I highlighted, among other things, the uncertainty surrounding MASN's programming for the foreseeable future, the substantial subscriber fees sought by MASN, and the pending litigation involving CSN, MASN, TCR, the Orioles, and MLB. I specifically asked MASN for additional information about its service to help Comcast further evaluate MASN's carriage offer, including, among other things, MASN's plans with respect to carriage of additional live professional sports programming (including so-called "Surcharge" events for which Comcast would have to pay an additional fee), its timetable for becoming a full-time network, and the programming MASN anticipated offering when it became a full-time network.

9. Mr. Gluck responded to my letter on June 9, 2005. Despite my request for specific information on MASN's programming plans, Mr. Gluck indicated that the network would consist of unspecified "local, regional, and national sporting events, sports news and information, sports talk, and other related programming." He provided no concrete details as to what specific types of programming he had in mind for the network. He alluded to the

possibility of carrying the games of other major professional sports teams as well as ACC basketball games, but did not indicate whether the rights to telecast those games were expected to become available for distribution in the Washington-Baltimore region in the foreseeable future. Mr. Gluck concluded his letter by offering to provide Comcast “with whatever information . . . you may need to make an informed decision” about carrying MASN.

10. Then, on June 14, 2005 -- only five days after Mr. Gluck sent his letter -- TCR filed its program carriage complaint at the Commission. It is not the case (as TCR has asserted) that Comcast has “refused to negotiate.”

11. At no point during these discussions with MASN did Comcast ever express an interest in, let alone demand, an equity interest in MASN.

12. TCR’s claims that Comcast’s decision not to carry MASN are based on the unaffiliated status of MASN are completely without merit. As an initial matter, Comcast faces an RSN competitor in nearly every region of the country where it operates or co-owns an RSN, including: New York, Chicago, Boston, Detroit, Atlanta, and San Francisco/Sacramento. Comcast carries both the affiliated and non-affiliated RSNs on the cable systems serving these markets. In fact, the vast majority of all programming that Comcast carries on its cable systems is unaffiliated.

13. As MASN is well aware, carriage negotiations are highly complex, and carriage decisions are typically informed by a wide range of considerations relating to the overall value proposition of a particular service, including, among other things: an understanding of the nature of the programming involved, its target demographics, its likely appeal to consumers, its similarities and differences from other programming available to the MVPD, and its cost. Comcast’s decisionmaking process with respect to MASN has been guided by similar

considerations in addition to the fundamental concerns reflected in the Maryland state court litigation that CSN has initiated concerning the breach of its contractual rights with the Orioles and TCR.

14. As noted above, Comcast raised specific concerns regarding MASN in the course of its discussions with MASN representatives over the last two months. Among other things, Comcast expressed concern regarding the dearth of programming on MASN in the foreseeable future and the uncertainty as to the product contained on the channel. MASN has not presented a coherent plan for MASN's existence once the breach of CSN's contractual rights is remedied.

15. Likewise, Comcast expressed concerns about the proposed license fees for MASN and the potential impact that such fees have on Comcast's customers. Other MVPDs, including EchoStar and Cox, apparently share these concerns.

16. An additional concern is the likely displacement of an existing basic tier programming service to make room for MASN. Most of Comcast's cable systems are constrained by limited channel capacity on the basic tier. In some cases, an existing service would have to be dropped or re-tiered to accommodate MASN and the programming on a second channel might have to be modified to accommodate "overflow" games. Comcast's ability to delete or re-tier programming services in this manner is often constrained by its carriage agreements with existing programmers. Also, Comcast, like any MVPD, typically seeks to avoid dropping or re-tiering existing services. Subscribers generally do not like program service disruptions, and deleting or re-tiering an existing channel would almost certainly raise subscriber concerns.

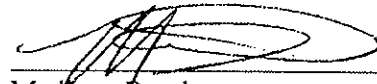
17. In sum, there are perfectly legitimate business reasons why Comcast has elected not to carry MASN under the terms that it has proposed. Indeed, I understand that other MVPDs

serving the Washington-Baltimore region -- including EchoStar, Cox, and Time Warner -- have also decided not to carry MASN (or, at least, have not yet reached agreement with MASN over carriage terms).

18. Comcast continues to be interested in carrying Nationals' games. Comcast is pleased with the early success of the Nationals this season and appreciates the strong and growing fan interest in the team. Comcast, however, will not be coerced into signing an agreement that is bad for its customers and its business and tramples on CSN's existing contractual rights with respect to Orioles' games.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on this 14th day of July, 2005.

A handwritten signature in dark ink, appearing to be "Madison Bond", written over a horizontal line.

Madison Bond